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Some years ago the Supreme Court of the United States held, in a case growing out of the war of the rebellion, that the investment by a guardian of moneys of his ward in bonds of the Confederate States during the civil war was unlawful, and accordingly they held the guardian personally liable for funds so invested. Lamar v. Micou, 112 U. S. 452.

In a very recent case that court seems to have repudiated the doctrine, but an examination of the two cases will reveal a substantial distinction. We refer to the case of Baldy v. Hunter, 18 S. C. Rep. 890, wherein the court held that the guardian of a minor, appointed in one of the Confederate States before the civil war, is not chargeable with funds of his ward, *bona fide* invested, during the war, in Confederate bonds, under State laws then existing. The court deduced from the earlier cases on the subject the following propositions concerning questions of this character:

That the transactions between persons actually residing within the territory dominated by the government of the Confederate States were not invalid for the reason only that they occurred under the sanction of the laws of that government, or of any local government recognizing its authority.

That within such territory the preservation of order, the maintenance of police regulations, the prosecution of crimes, the protection of property, the enforcement of contracts, the celebration of marriages, the settlement of estates, the transfer and descent of property, and similar or kindred subjects, were, during the war, under the control of the local governments constituting the so-called Confederate States.

That what occurred or was done in respect of such matters under the authority of the laws of these local *de facto* governments should not be disregarded or held invalid merely because those governments were organized in hostility to the Union established by the national constitution; this, because the existence of war between the United States and the Confederate States did not relieve those who were within the insurrectionary lines from the necessity of civil obedience, nor destroy the bonds of society, nor do away with civil government or the regular administration of the laws, and because transactions in the ordinary course of civil society as organized within enemy's territory, although they may have indirectly or remotely promoted the ends of the *de facto* or unlawful government organized to effect a dissolution of the Union, were without blame "except when proved to have been entered into with actual intent to further invasion or insurrection." And that judicial and legislative acts in the respective States composing the so-called Confederate States should be respected by the courts if they were not "hostile in their purpose or mode of enforcement to the authority of the national government, and did not impair the rights of citizens under the constitution." The case of Lamar v. Micou, first mentioned is susceptible of a clear distinction from cases like Baldy v. Hunter. It appears that in the former case the guardian was appointed prior to the war by the surrógate of Richmond county, N. Y., in which State he at that time (1855) resided; that immediately upon his appointment he received, in New York, several thousand dollars belonging to each of his wards, and invested part of it in 1856 in the stock of a New York bank, and a part in 1857 in the stock of a Georgia bank, each bank then paying good annual dividends; that in 1861 he had a temporary residence in New York; that upon the breaking out of the rebellion he removed all his property, and voluntarily left New York, passing through the lines to Savannah, where he took up his residence, sympathizing with the rebellion, and doing all that was in his power to accomplish its success, until January, 1865; and that he took up his residence again in New York in 1872 or 1873, after which time he lived in that city. It further appeared that of the money of his wards accruing from bank stocks he, in 1862, invested $7,000 in bonds of the Confederate States and of the State of Alabama, and afterwards sold the Alabama bonds, and invested the proceeds in Confederate State bonds. It thus appears that Lamar v. Micou was a case in which the guardian, becoming such under the laws of New York, in violation of his duty to the country, and after the war became flagrant, voluntarily went into the Confederate lines,

and there gave aid and comfort to the rebellion; and yet he asked that the investment of his wards' money in Confederate States bonds receive the sanction of the courts sitting in the State under the authority of whose laws he became and acted as guardian.

NOTES OF IMPORTANT DECISIONS.

NEGLIGENCE — IMPUTED NEGLIGENCE—MASTER AND SERVANT.—It is decided by the Supreme Court of Indiana, in Abbitt v. Lake Erie & W. Ry. Co., 50 N. E. Rep. 730, that where by agreement between two co-employees, it becomes the duty of one to look out and give notice to the other of approaching danger, the relation of principal and agent exists between them in this respect, and negligence of the former in the performance of such duty is imputable to the latter. It appeared that plaintiff's intestate was killed by defendant backing a car against another car, under which deceased was at work. This car displayed a red light on the platform. The question whether a red light on a railroad track was a danger signal, and what was defendant's duty in its presence, was disputed. It was held that it was the province of the jury to find the significance of the red light, and determine defendant's duty in its presence; and an instruction telling the jury what inference to draw in case they found the red light to be a danger signal was erroneous. Two of the members of the court dissent.

MUTUAL BENEFIT SOCIETY—CONSTITUTION—RIGHTS OF SECEDERS.—In Ahlendorf v. Barkous, 50 N. E. Rep. 887, decided by the Appellate Court of Indiana, it appeared that the Independent Order of Foresters is a mutual benefit society, and its high court of Illinois is incorporated. Its constitution provides that it shall have original jurisdiction of all courts organized under its authority, and provides certain rules for their government. By article 11, § 1, the high chief ranger was given complete authority over all subordinate courts and their effects, and may demand and receive them. By article 15, § 5, he may, for cause, withdraw the authority, and dissolve any local court. By article 12, § 1, the moneys of the court are merely a trust fund for the purposes of the order, and not to be divided up among the members under any pretense. By article 12, § 2, whenever a member severs his connection by withdrawal or otherwise, his interest in any of the funds or property of the court becomes extinguished. It was held that where the majority of the members of a subordinate court seceded in order to join in the organization of a high court for the State of Indiana, and the charter was given to the remainder, who refused to secede, the seceders are not entitled to the effects of the lodge, such as the regalia, furniture, etc., as against the high chief ranger, since the constitution of the society constitutes the law by which the rights of the local lodges must be determined; and the fact that article 18, § 1, provides that whenever a court forfeits its charter, and becomes dissolved, in consequence of the lack of the necessary number (15) of members, the remaining members may do certain things, does not help the seceders, since, if the court became dissolved by reason of their actions, the right to its effects vests in the high court, and not in the members, according to the constitution, and that a member of a voluntary association formed a mutual benefit has an interest in the general assets of the association only so long as he remains a member, unless there is a dissolution of the association.

STATUTE OF FRAUDS—PERFORMANCE WITHIN ONE YEAR—MORTGAGE.—In construing a section of the statute of frauds of the State of Nebraska, the Supreme Court of that State hold in a recent case, that where the legislature, in a statute, employs language which has elsewhere received a fairly well-settled construction, it will be presumed that such construction was in the contemplation of the legislature, and expresses the true meaning. Kendall v. Garneau, 75 N. W. Rep. 852. In accordance with this rule they decide that that portion of the statute of frauds of Nebraska, which brings within its inhibition, verbal or unsubscribed agreements which by their terms are not to be performed within one year from the time of making, does not extend to agreements wholly performed on one side within the year. The following is from the opinion: "Kendall, in his amended petition against Garneau, alleged that December 11, 1890, the Patrick Land Company sold and conveyed to Charles F. Mullin, 24 lots of land, and that to secure the purchase money Mullin that day made and delivered to the land company his 24 promissory notes, each payable December 11, 1893, each for $600, and each secured by a mortgage on one of the lots; that these notes had become the property of the plaintiff; that February 23, 1891, Mullin conveyed said lots to Garneau by deed poll, incorporated in the petition, containing the following covenant: 'Subject to incumbrances amounting to $14,400, which the said Joseph Garneau, junior, hereby assumes and agrees to pay, and the interest thereon from December 11, 1890.' It was further alleged that the incumbrances mentioned in said covenant were the mortgages securing plaintiff's notes, and that said notes were due and unpaid. Judgment was prayed for their amount. A general demurrer to this petition was sustained, and a judgment of dismissal entered.

"It will be observed that the notes were not payable for more than one year after the conveyance to Garneau, and that that deed was not subscribed by the grantee. The question raised by the demurrer is whether such a transaction is within the first subdivision of section 8, ch. 32, Comp. St., which provides: 'In the following cases every agreement shall be void unless such

agreement, or some note or memorandum thereof, be in writing, and subscribed by the party to be charged therewith: First. Every agreement that by its terms is not to be performed within one year from the making thereof.' It is contended that the liability of the grantee under similar circumstances has been settled by repeated adjudications. An examination of the cases will disclose that the propositions so far decided have been that a third person for whose benefit a promise is made may sue thereon, although he be not a party to the consideration; and that such a promise is a principal undertaking, and so not within that provision of the statute of frauds which requires a writing in order to charge one on a promise to answer for the debt, default, or misdoings of another. In some cases it affirmatively appears that the debt became due, or that it was in terms payable, within the year. In only one does the contrary appear, and in none has the provision we are now called upon to consider been invoked or its application considered. In ascertaining whether this provision applies, the determining question is whether the statute contemplates an agreement which, by its terms, is not to be completed within the year, or only those which are not to be performed on either side within that period. If the latter, it is not here applicable, because the conveyance was made at once, and only payment by the promisor was postponed beyond the year. Were we at liberty to base our construction upon what seems the natural and ordinary meaning of the language employed, the solution ought not to be difficult. As stated by Lord Ellenborough in Boydell v. Drummond, 11 East, 142, 'performed' means completely performed. It means done; not begun, or half done. The policy of the statute was to prevent the evidence of such contracts from resting on the uncertain memory of witnesses for so long a time. A half performance would not satisfy this object. But the language of the statute is not altogether certain, and we have, from another rule of construction, a guide to the intent of the legislature. Our statute was first enacted in 1856. Sess. Laws 1856, ch. 33. It was re-enacted in 1864. Sess. Laws 1864, p. 70. From its closely following in the main the statute of Charles II., and from the changing of some words which had created difficulty in the construction of that statute, and the addition of certain sections rendering explicit matters which were left by the English statute in doubt, it is quite evident that it was carefully prepared, with a view to the many decisions construing the original act and the earlier American acts founded thereon. If the words used had at the time received a settled construction, we must presume that the legislature adopted them in that sense. Boydell v. Drummond was decided in 1809. One of the questions in that case was whether an agreement was within the statute if its performance was to be commenced on both sides within the year. The court held that it was. To the writer's mind, the reasons for holding that a part performance does not take the case out of the statute apply with equal force to a contract wholly performed on one side, but unperformed on the other. Nevertheless, it was in the course of the argument suggested by Lord Ellenborough that, if there was complete performance on one side, and nothing remitted beyond the year except payment of the consideration, the statute would not apply. This chance suggestion in argument of an idea apparently removed by final consideration of the case, was seized upon later, and made the basis of one or more *obiter dicta*. Finally, in 1832, the doctrine was announced, in a case directly involving the question, that the statute refers only to agreements not to be performed on either side within the year. Donellan v. Read, 3 Barn. & Adol. 899. The reason there given is solely *ab inconvenienti* and fallacious. The case is supposed of a sale of goods to be paid for in 13 months, and it is said that the law could not intend that the vendee should so get the goods and evade payment. The court failed to perceive that, although the special contract would fail, there could be a recovery on a *quantum valebant*. Moreover, the statute is founded on public policy, and contemplates that individuals must and shall suffer if they neglect to comply with its simple requirements. Donellan v. Read was doubted in Souch v. Strawbridge, 2 Man. G. & S. 808, in 1848, but was followed in Cherry v. Heming, 4 Exch. 631, and other cases. In 1886, the doctrine was disapproved, but was considered to be too firmly established to be departed from. Miles v. Estate Co., 32 Ch. Div. 266. When our statute was first enacted the doctrine of Donellan v. Read had been adopted in Maine (Holbrook v. Armstrong, 10 Me. 31), in Alabama (Rake v. Pope, 7 Ala. 161), in Georgia (Johnson v. Watson, 1 Kelly, 348), in South Carolina (Bates v. Moore, 2 Bailey, 614), in Missouri (Blanton v. Knox, 3 Mo. 343), in Maryland (Ellicott v. Turner, 4 Md. 476). It had then been disapproved in only two States.—in New York (Broadwell v. Getman, 2 Denio, 87), and in Vermont (Pierce v. Paine, 28 Vt. 34). Prior to its re-enactment in 1864, the English rule had been followed in New Jersey. Berry v. Doremus, 30 N. J. Law, 399. It was again re-enacted as a part of the Revised Statutes in 1866, and had in the meantime received a construction like that put upon it in England in New Hampshire (Perkins v. Clay, 54 N. H. 518, overruling an earlier case to the contrary), and in Illinois in a case just like that before us (Curtis v. Sage, 35 Ill. 22). By a course of decisions Indiana and Wisconsin had committed themselves also to the English construction. See cases cited in Wolke v. Fleming, 103 Ind. 105, 2 N. E. Rep. 325, and Grace v. Lynch, 80 Wis. 166, 49 N. W. Rep. 751. Massachusetts had, however, in 1864, adopted the view previously expressed in New York and Vermont. Marcy v. Marcy, 9 Allen, 8. The cases since the last enactment of our statute are not of similar importance, but it may be said that the following later cases enforce the English rule: Smalley v. Greene, 52 Iowa, 241, 3 N. W. Rep. 78;

Dant v. Head, 90 Ky. 255, 13 S. W. Rep. 1073; Durfee v. O'Brien, 16 R. I. 213, 14 Atl. Rep. 857; Seddon v. Rosenbaum, 85 Va. 928, 9 S. E. Rep. 326; Railroad Co. v. English, 38 Kan. 110, 16 Pac. Rep. 82. The other view has received an implied support from Judge Toulmin in Warner v. Railway Co., 4 C. C. A. 673, 54 Fed. Rep. 922. It will thus be seen that at the time of the first adoption of our statute the almost uniform current of authority was in accord with Donellan v. Read, and that the later decisions have not tended to very materially reduce that preponderance. There are, it is true, some slight variations in the language of different statutes, but nothing of any logical force in controlling the construction in this respect. We think it must be said that the words of our statute had received such a settled construction that our legislature, in enacting them, and in twice re-enacting them, intended that that construction should be placed upon them. In the recent case of Bank v. Miller, 53 Neb.—75 N. W. Rep. 569, we expressed our disapproval of the former tendency of courts to evade the statute of frauds, and refused to give effect to the English doctrine of an equitable mortgage by deposit of title deeds, in part because such a mortgage is opposed to the letter and the spirit of the statute. But in that respect the language of the statute is most explicit, and the English rule had been repudiated by all the well-considered cases in the United States, so that there was no presumption that our legislature had intended to give effect to such equitable mortgages. We here adopt the English rule, not as being a correct construction of their statute, but because, we are convinced that in the light of history it is the construction which our legislature intended should be adopted. Before leaving the subject, it may be well to say that some of the cases imply a distinction as between contracts merely contemplating performance on one side within the year and those where performance has actually taken place on the one side within that period, and the action brought after such performance. Whether there is ground for such distinction we need not here consider, and do not decide, because in this case there had been actual as well as contemplated performance."

OFFICE AND OFFICER — NOTARY PUBLIC—DE FACTO NOTARY—VENDOR'S LIEN — DEFECTIVE TITLE.—In Stakes v. Acklen, 46 S. W. Rep. 316, decided by the Court of Chancery Appeals of Tennessee, it was held that a notary is an officer holding a public office; that a female duly elected and commissioned as a notary public is a *de facto* public officer, and her official acts are not void as against the public and third persons; that a suit to enforce a vendor's lien may be maintained, even though the conveyance be defective, if it be made good before final decree; and that a vendee in possession under a conveyance with covenants cannot rescind the contract on the ground of defects in the title, in the absence of fraud or the vendor's insolvency, and will be compelled to accept a title made good before final decree. The court says in part: "A notary public was an officer known to the common law, and, in the absence of legislation prescribing his duties and the manner of their performance, the common law could be looked to for the purpose of ascertaining them. Kirsey v. Bates, 7 Port. (Ala.) 529. See, also, Smith v. Meador, 74 Ga. 416. The office of notary public being an office public in its nature, and pertaining to government, and the *feme sole* in this case having been duly elected thereto by competent authority under the law, and commissioned to discharge his duties, and being openly in possession, with the accessories of the office, and in the performance of its functions, were her acts, done in office, absolutely void, because she was ineligible under the law to hold the office? We hold that they were not. She was an officer *de facto*. The ineligibility of the incumbent of an office, established by law, openly in possession of it *colore officii*, and discharging its functions, does not render her acts invalid, as to third persons and the public dealing with the office, and accepting her acts as the acts of the rightful incumbent of the office. We need not attempt to give a comprehensive definition of what it takes to constitute an officer *de facto*, in the sense of the law. The books and cases are full of definitions. We cite some below. After reading the books and cases to which we have had access, we are of opinion that it will be found exceedingly difficult, if not impossible, to formulate a definition sufficiently comprehensive and accurate to meet the facts of all cases that may arise. But it is settled by a current of authority almost unbroken for over 500 years in England and in this country, that ineligibility to hold an office does not prevent the ineligible incumbent, if in possession under color of right and authority, from being an officer *de facto* with respect to his official acts, in so far as third persons are concerned. See the leading case of State v. Carroll, 38 Conn. 449, and cases cited; Smith v. Bondurant, 58 Am. Rep. 438, note, and cases cited; 5 Am. & Eng. Enc. Law, pp. 96-109, notes, and numerous cases there cited; Shelby v. Alcorn, 72 Am. Dec. 169, 187, full note, and cases cited; Weatherford v. State (Tex. Cr. App.), 37 Am. St. Rep. 828, note, and cases cited, 21 S. W. Rep. 251; Walcott v. Wells (Nev.), 37 Am. St. Rep. 478, 493, note, and cases cited, 24 Pac. Rep. 367. Our own cases are in accord. Douglas v. Neil, 7 Heisk. 438; Kelly v. Story, 6 Heisk. 202; McLean v. State, 8 Heisk. 22; Lynch v. Lafland, 4 Cold. 96; Venable v. Cur, 2 Head, 582; Pearce v. Hawkins, 2 Swan, 88; Blackburn v. State, 3 Head, 690; Bates v. Dyer, 9 Humph. 162; Moore v. State, 5 Sneed, 510; Ward v. State, 2 Cold. 605; Calloway v. Sturm, 1 Heisk. 764; Mayor, etc. of Nashville v. Thompson, 12 Lea, 344.

"In the case of Blackburn v. State, *supra*, it was held, as said in the case of Mayor, etc. of Nashville v. Thompson, *supra*, that a person inducted into office according to the forms of law is an officer *de facto*, although incompetent by the provis-

ions of the constitution to hold the office, and his competency cannot be inquired into by the parties affected by his acts. In this State, there is no constitutional inhibition against a female holding the office of notary public. It simply requires an enabling act of the legislature to invest the sex with the power to hold it. The ineligibility of the female notary taking the acknowledgments in this case, caused by the absence of legislation conferring the power upon women to hold the office, did not devest her act of the force and incidents attaching to the act of a *de facto* officer, the office being one in existence by virtue of law, and she having been regularly elected and commissioned, and inducted into office, and given the apparent sanction of competent authority to discharge its duty."

DELEGATION OF LEGISLATIVE AUTHORITY.

History of the development of the law in the United States covering the delegation of legislative authority shows that a vote or petition of the people on the enactment of a law was first objected to on the ground that it was a violation of the old legal principle "*delegatus non potest delegare*."[1] Very soon it was seen that the objection could not be held to be universally true without overturning our whole plan of the government of cities, towns and other municipalities, and an exception was soon announced in favor of municipalities on the ground of custom and public policy concerning the granting of charters and charter rights.[2] Again it was noted as a possible exception, that a law in the nature of a police regulation could be submitted to a vote or petition.[3] And about the same time there was further developed what has become to be known as the "contingency" or "condition subsequent" theory, which theory has given rise to seemingly interminable discussions, numerous dissenting opinions and refinements beyond the power of man to reconcile.[4] The argument is usually unsatisfactory and is evidently felt to be weak by the judges who use it, as it is quite usual to base the law on all these grounds.[5] The case of Clark v. City of Rochester,[6] suggests a possible solution of the whole subject. The court says: the "legislature consults the electors" in submitting a law to a vote. The principle "*delegatus non potest delegare*," is one of the main principles of agency. It has its exceptions as in the case of the delegation to municipal corporations or of a police power to other individuals or bodies, usually the people affected. On the contingent theory, the vote is held not to be a delegation at all, and herein is the rub. How the application of a law can be made to rest on the will of some one else, without transferring a power especially, if it is to be held to do so, as to a general law, and not to do so, as to a local law, is a little too refined for most minds.[7] But turning to the thought that the electors are consulted, and remembering the very common practice of agents to make contracts subject to ratification of their principals, and to consult with them, it is at once seen, that though part of the responsibility is thrown on the principal, still it is never regarded a violation of the principle "*delegatus non*." The application of the theory of reference by an agent to the principal for the ratification of the agent's act seems to be valuable in this, it furnishes a test of the validity of the law which the contingency theory could not logic-

[1] Rice v. Foster, 4 Harrington, 479; Maize v. State, 4 Ind. 342; Parker v. Com., 6 Pa. St. 507 (or 6 Barr); *Ex parte* Wall. 48 Cal. 279; Barco v. Himrod, 8 N. Y. 483 (or 4 Selden); Thorne v. Cramer, 15 Barb. 112; Bradley v. Baxter, 15 Barb. 122.

[2] Bank of Chenango v. Brown, 26 N. Y. 467; People v. Hurlbut, 24 Mich. 44; State *ex rel.* Witter v. Forkner, 94 Iowa, 1, 62 N. W. Rep. 772; State v. King, 37 Iowa, 562; Morford v. Unger, 8 Iowa, 82; City of Des Moines v. Hillis, 55 Iowa, 643; State v. Pond, 93 Mo. 606; Feek v. Twp. Board of Bloomingdale, 47 N. W. Rep. 37; State v. Circuit Court of Gloucester Co., 50 N. J. Law, 585, 15 Atl. Rep. 279; Ter. *ex rel.* McMahon v. O'Conner, 5 Dak. Ter. 397, 41 N. W. Rep. 746; Rooz v. Swenson, 6 Minn. 428.

[3] Boyd v. Bryant (1879), 35 Ark. 69; State v. Wilcox (1875), 42 Conn. 364; State *ex rel.* Witter v. Forkner, 94 Iowa, 1; Weir v. Cram, 37 Iowa, 653; Ter. *ex rel.* McMahon v. Connor, 5 Dak. Ter. 397, 41 N. W. Rep. 746; Menkin v. City of Atlanta, 78 Ga. 668.

[4] State v. Wilcox, 42 Conn. 364; State *ex rel.* Witter v. Forkner, 94 Iowa, 1; Rooz v. Swenson, 6 Minn. 428; Groesch v. State, 42 Ind. 547; The Lafayette Muncie & Bloomington Ry. Co. v. Geiger, 34 Ind. 185; Clark v. Rogers, 81 Ky. 43; Lock's Appeal, 72 Pa. St. 491; State v. Parker, 26 Vt. 357; Bancroft v. Dumas, 21 Vt. 456; People *ex rel.* Boardman v. City of Butte, 4 Mont. 175; Crouse v. State, 57 Md. 71; Alcorn v. Hamer, 38 Miss. 652; State v. Noyes, 30 N. H. 279; State v. Commissioners, 86 N. Car. 8; Clark v. City of Rochester, 24 Barb. 447; Thornton v. Territory (Wash.), 17 Pac. Rep. 896.

[5] See especially the more recent cases cited in note 4, *supra*.

[6] 24 Barb. 447.

[7] State *ex rel.* Witter v. Forkner, 94 Iowa, 1 (Kinne's dissenting opinion); The People v. Colins, 3 Mich. 343; Rohrbacher v. Mayor, etc. of City of Jackson, 51 Miss. 735, Tarbell's dissenting opinion; Feek v. Twp. Board of Bloomingdale, 47 N. W. Rep. 37.

ally apply. It is, that the vote or petition must be that of a majority of the real principal. The vote or petition of those not interested or anything less than the whole of the people beneficially interested is condemned. The only exception is, in the case of police regulations which is based on the higher or more powerful principle "*Salus populi est suprema lex.*" Take the example of the powers granted boards of health. The necessity of suppressing an epidemic may require the most stringent rules, which should be determined by a body of men skilled in the laws of hygiene, and under the theory of police regulation, this can be done, not because there is in no sense a violation of the princple "*delegatus non*," but because that principle must stand aside, owing to the necessity of the case, but only so far as the necessity and sound public policy require.

The suspension of civil law and the establishment of military law in lieu thereof is likewise justified by necessity akin to a police regulation. The evident favor in which laws based on a vote or petition are received, the growth of the system throughout the country, and the suggestion, and even adoption, of the "initiative and refferendum" system, show that the old fears of legislators throwing off all responsibility of frittering away the liberties of the people were not well founded in fact, and that the practice is bound to grow rather than diminish. A glance at some of the arguments of the courts in regard to the contingency theory will aid in showing the complexity of the subject, and how unsatisfactory is the basis of local option supported on that ground. In Iowa and Rhode Island it was held the "condition of a vote" is a nullity,[8] and the constitutionality of the law was sustained accordingly, the acts under consideration being enforcible and perfect in other respects. Many States hold that the law authorizing a vote is no delegation; that it only determines a fact;[9] that the vote only determines whether the law shall become operative or not;[10] that the vote only determines whether a particular thing shall be done under the law.[11] Exception has been taken to certain females being allowed to vote, the condition being thought improper.[12] On the other hand, the condition of a vote of the tax paying householder was not objected to.[13] While in a more recent case in Washington Territory,[14] exception was taken to the fact that the vote was to be taken of a precinct not a municipal corporation (17 Pac. Rep. 896); and in the same case by another judge, the law was vigorously assailed because the vote was a delegation of legislative power. Yet, in Nebraska, bonds in aid of a grist-mill were held void, because the object was not one of internal improvement.[15] In Washington Territory, a general objection was made to such laws on the ground that the enactment was not a law in that the fundamental definition of law was violated. The rule of action was not prescribed by the supreme power of the State, and there was no command, but only a grant of power, and the court argues that the municipalities are delegated power to make by-laws, not laws in a proper sense.[16] The answer to this last argument is, that the supreme power of the State is the people, and the law is more surely a command of, and in accord with, the supreme power of the State with the vote than without it. In North Carolina, the court holds that the "legislature only determines that the law is not expedient," unless voted for by the people.[17] There are a large class of cases where the subject-matter of the law is in the nature of a local improvement, as the voting of bonds in aid of railroads, the building of school houses bridges, drains, levees, and to organize schools, etc.[18] Such laws are usually sustained on ground of power to grant charter rights, and on the contingency theory. It may be argued that the vote is a valid condition, but not because the legislators do not avoid a certain responsibility, but because that responsibility is placed in proper hands.

[8] Santo v. State, 2 Iowa, 165; State v. Copeland, 3 R. I. 33.

[9] Boyd v. Bryant, 35 Ark. 69.

[10] Clarke v. Rogers, 81 Ky. 43.

[11] State *ex rel.* Witter v. Forkner, 94 Iowa, 1.

[12] Rohrbacher v. Mayor of City of Jackson, 51 Miss. 735.

[13] People *ex rel.* Boardman v. The City of Butte, 4 Mont. 175.

[14] Thornton v. Ter., 17 Pac. Rep. 896.

[15] State *ex rel.* Baum v. Adams Co., 15 Neb. 562.

[16] Thornton v. Ter., 17 Pac. Rep. 896.

[17] Cain v. Commissioners, 86 N. Car. 8.

[18] Talcott v. Twp. of Pine Grove, 1 Flippin (U. S. Cr. Ct.); Alcorn v. Hamer, 38 Miss. 652; State *ex rel.* Dorne v. Wilcox, 45 Mo. 448; Cain v. Commissioners, 86 N. Car. 8; Nichols v. The Mayor and Aldermen of Nashville, 9 Humph. 252.

An objectionable delegation is one concerning which the people have a right to make objection, which right does not exist as to the act of an agent, already ratified by a vote of the governing majority of the people. Let the law be passed authorizing the issue of bonds for a local improvement in the county of "Q," on the condition that a vote be taken of the inhabitants of the county of "D," and it is at once seen that there is an unlawful delegation of authority to untoward hands; that the condition attached to the law is an improper one; the act a violation of the principles of a representative form of government. In conclusion, the rule may be stated that the passing of a law depending for its enforcement upon the vote of the people, where the law is intended to be enforced, or of the county or city, wherein matters of mere local application are to be enacted, is valid, there being no violation of the principle "*delegatus non potest delegare*" in such case, any more than in ordinary agency where the agent makes a contract subject to the ratification of his principal. That laws passed on a condition of a favorable vote or petition of others than the people beneficially interested, or their legally constituted governing body, must be in the nature of a police regulation, which vote or petition, within reason, is necessary under the circumstances.

Dow City, Iowa. E. H. SWASEY.

INJUNCTION—RESTRAINING CRIMINAL PROSECUTION.

PAULK v. MAYOR, ETC. OF CITY OF SYCAMORE.

Supreme Court of Georgia, April 11, 1898.

Courts of equity will not by injunction prevent the institution of prosecutions for criminal offenses, whether the same be violations of State statutes or municipal ordinances; nor will they, upon a petition for an injunction of this nature, inquire into the constitutionality of a legislative act, or the validity or reasonableness of an ordinance making penal the act or acts for the doing of which prosecutions are threatened.

FISH, J.: The plaintiff in error brought his petition to enjoin criminal proceedings against him and his employees, under the provisions of the charter of Sycamore prohibiting and making penal the sale of intoxicating liquors within its incorporate limits, and to enjoin similar proceedings under a municipal ordinance prohibiting, under penalty of fine or imprisonment, the keeping of such liquors in the city for the purpose of sale or barter. He alleged that the municipal ordinance in question is void, and has been repealed, and that, if the corporate authorities are allowed to institute and carry on the threatened prosecutions, "it will not only harass and jeopardize his personal liberty, without any lawful authority, but it will also interfere with him in the enjoyment of his civil rights, break up his business, and cause him to sacrifice and lose his * * * property and stock of goods, and damage him in a large amount, and all without authority and without adequate redress," and that his damages will be irreparable.

In Gault v. Wallis, 53 Ga. 675, it was held that "courts of equity have no jurisdiction to interfere with the administration of the criminal laws of the State by injunction or otherwise." And in Phillips v. Mayor, etc. of Stone Mountain, 61 Ga. 386, it was held: "No injunction, or order in the nature of an injunction, will be granted to restrain proceedings in a criminal matter." In Garrison v. City of Atlanta, 68 Ga. 64, where these decisions were followed, the principle is reaffirmed in the following language: "Injunction will not be granted to restrain a criminal proceeding." These decisions seem to be decisive of the questions raised in the present case, and but for a later decision of this court, which is invoked in behalf of the plaintiff in error, and which we shall presently consider, we should not deem it necessary or profitable, in this opinion, to do more than cite and follow these adjudications. The case in 61 Ga. 386, is especially in point, owing to its similarity to the case now under consideration. In that case certain retail liquor dealers sought to enjoin prosecutions under a municipal ordinance, which was passed after they had obtained their license to sell, on the ground that the ordinance was void, and materially restricted their business. This court, speaking through Bleckley, J., who delivered the opinion, said: "Whatever may be the infirmities of the penal ordinance of Stone Mountain, an injunction in the present case was properly denied. If unlawful convictions take place before a municipal court, reversal can be had in the superior court, as a court of law, by *certiorari*. This is a plain and adequate remedy, and a court of equity need not and cannot interfere. Chancery takes no part in the administration of criminal law. It neither aids the criminal courts in the exercise of jurisdiction, nor restrains or obstructs them." The principle upon which these decisions are founded has long been well settled by a great current of authority, both in this country and in England. In *Re* Sawyer, 124 U. S. 200, 8 Sup. Ct. Rep. 482, it was reaffirmed by the Supreme Court of the United States in the most emphatic terms. The first headnote in that case is: "A court of equity has no jurisdiction of a bill to stay criminal proceedings." And in the opinion of the court it is said: "The office and jurisdiction of a court of equity, unless enlarged by express statute, are limited to the protection of the rights of property. It has no juris-

diction over the prosecution, punishment, or pardon of crimes or misdemeanors, or over the appointment or removal of public officers. To assume such a jurisdiction, or to sustain a bill in equity to restrain or relieve against proceedings for the punishment of offenses, or for the removal of public officers, is to invade the domain of courts of common law, or of the executive and administrative department of the government." Further on, in the same opinion, after stating that "the modern decisions in England, by eminent equity judges, concur in holding that a court of chancery has no power to restrain criminal proceedings, unless they are instituted by a party to a suit already pending before it, and to try some right that is in issue there," and that "Mr. Justice Story, in his Commentaries on Equity Jurisprudence, affirms the same doctrine," it is said: "And in the American courts, so far as we are informed, it has been strictly and uniformly upheld, and has been applied alike whether the prosecutions or arrests sought to be restrained arose under the statute of the State or under municipal ordinances,"—citing West v. Mayor, etc., 10 Paige, 539; Davis v. American Soc., 75 N. Y. 362; Tyler v. Hamersley, 44 Conn. 419, 422; Stuart v. Board of Sup'rs, 83 Ill. 341; Devron v. First Municipality, 4 La. Ann. 11; Levy v. City of Shreveport, 27 La. Ann. 620; Moses v. Mayor, etc., 52 Ala. 198; Gault v. Wallis, 53 Ga. 675; Phillips v. Mayor, etc. of Stone Mountain, 61 Ga. 386; Cohen v. Goldsboro Com'rs, 77 N. Car. 2; Waters Pierce Oil Co. v. City of Little Rock, 39 Ark. 412; Spink v. Francis, 19 Fed. Rep. 670, 20 Fed. Rep. 567; Suess v. Noble, 31 Fed. Rep. 855.

To this formidable and strong array of authorities we might ourselves add a number of more recent decisions to the same effect by our American courts, but we do not deem it necessary to do so. Counsel representing the plaintiff in error, recognizing the fact that the three Georgia decisions that we have cited, particularly the one rendered in 61 Ga. 386, in the Stone Mountain case, are against their contentions, rely upon the ruling of this court in City of Atlanta v. Gate City Gaslight Co., 71 Ga. 106; and considering the principle announced in the fifth headnote to that case simply as an abstract proposition, applicable to all cases in which some sort of a property right may be injuriously affected by a criminal prosecution, we can understand the confidence with which they invoke that decision in behalf of their client. But the principle there announced is to be considered and applied in the light of the extraordinary facts disclosed by the record and discussed in the opinion of the court in that case. There are wide differences between that case and the one at bar. But that case, the city of Atlanta, to use the language of the court, had "stood by and seen this company make an outlay of $140,000 in the exercise of their rights under this charter, without intimating to them that objection would be made to their use of the streets for the purposes authorized, and without the use of which their enterprise would not have been undertaken and could not be prosecuted, and without which they would lose their entire outlay and be involved in irrevocable ruin." And then, when the gaslight company was ready to begin the work of laying its mains, the municipal authorities sought to prevent it from exercising its valuable, vested, corporate franchises, by first refusing to allow it permission to excavate or obstruct the streets of the city for the purpose of laying its pipes, and then threatening, under certain city ordinances, to prosecute and punish any of its agents or employees who, without such permission, should undertake to do so. The court, after demonstrating that "the permission of the city of Atlanta was not required to enable the complainant to exercise its franchises," says: "Upon every principle of equity, this failure to notify the complainant of their intention until this heavy expenditure had been made would estop them. Such conduct is fraudulent in the eye of the law, and where practiced upon an innocent party, who is seeking *bona fide* to carry out the provisions of its charter by availing itself of the powers and privileges thereby granted would, if anything could, debar them from now being heard." The court seems also to have been of the opinion that the municipal ordinances making penal the excavation or obstruction of the streets of the city, without permission of the municipal authorities, were void in so far as they affected the vested rights of the gaslight company under its legislative charter. And the court, on page 126, strikes what it appears to us is the real keynote of the case, when it says: "Where it is manifest, as in this case, that a prosecution and arrest is threatened for an alleged violation of city ordinances for the sole purpose of preventing the exercise of civil rights conferred directly by law, injunction is a proper remedy to prevent injury to the party thus menaced." It will be seen that the distinguishing feature of that case, and the one which was successfully employed in invoking the interposition of equity, was the patent fact that the threatened prosecutions under the municipal ordinances were being used, not for the legitimate purpose of preventing the streets of the city from being unlawfully injured or obstructed, but for the purpose of destroying the valuable, vested franchises of the Gate City Gaslight Company. And equity, seeing the palpable fraud which was being perpetrated, under color of what purported to be a simple police regulation, stretched forth its strong arm to prevent the irreparable damages which would ensue if it did not afford its protection to the rights which were thus imperiled. It was long ago decided that "an injunction will be granted to prevent the franchise of a corporation from being destroyed, as well as to restrain a party from violating it, by attempting to participate in its exclusive privileges." Osborn v. Bank, 9 Wheat. 738. We think, therefore, that the true principle which underlies the case that we have just been discussing, as we gather it from its peculiar facts

and the opinion of the court, is that when the damages would be irreparable, if the threatened injury is not prevented, equity, if properly appealed to, will not permit valuable vested corporate franchises, granted by the State, to be seriously impaired or practically destroyed by prosecutions instituted under color of municipal ordinances, which are wrested from their legitimate purposes and fraudulently used, in a matter to which they cannot apply, as a means with which to prevent the exercise of these franchises.

A similar case to the one in 71 Ga. 106, is that of Port of Mobile v. Louisville & N. R. Co., 84 Ala. 115, 4 South. Rep. 106, where the Supreme Court of Alabama held that "where a city attempts, by an ordinance, unlawfully to destroy the franchise of a railroad company, a court of equity will not refuse to interfere by injunction for the reason that the ordinance is *quasi*-criminal in character." Somerville, J., delivering the opinion of the court, said: "It cannot be tolerated that a municipal corporation * * * should escape the grasp of a court of chancery, in a clear case of equitable cognizance, by the device of adding a penalty to an illegal and void ordinance." How different from such a case as the one in 71 Ga. 106, is the one at bar. Here no question as to the destruction or invasion of civil rights which had become vested under a legislative charter is presented; and, so far as the record discloses, the municipal authorities of Sycamore are simply endeavoring, in good faith, to enforce the penal provisions of the charter and ordinance of the city, the enactment of each of which appears to have been a *bona fide* effort to exercise the police power, for the protection and preservation of the peace and good order of the community. The plaintiff in error, with full knowledge that the charter of the city contained a provision prohibiting the sale of intoxicating liquors within its incorporated limits, and that one of its ordinances prohibited the keeping of such liquors for sale or barter therein, after seeking and taking legal advice, deliberately purchased a stock of whisky, beer, etc., procured State and federal licenses, opened a "store" in that city, and commenced selling his stock, in defiance of the law and the ordinance. Having voluntarily gotten himself into this predicament, he now invokes the aid of equity to extricate him therefrom, upon the plea that his business will be ruined, without authority of law, unless he is afforded this relief. He deliberately undertook to test the validity of both the local law and ordinance of Sycamore, by voluntarily and knowingly engaging in the business which they prohibited. He has ample opportunity to make this test in the courts having jurisdiction over criminal matters, and a court of equity will not invade their domain in his behalf.

A case which is almost the exact counterpart of this one is that of Burnett v. Craig, 30 Ala. 135, in which there was a bill for injunction, which alleged that the town council of Cahaba had passed an ordinance fixing a license for retailing within its incorporate limits; that the complainant had obtained a State license, and, acting upon legal advice that the ordinance was illegal, had opened a store in that town, and commenced retailing spirituous liquors; that he was thereupon arrested for violating the ordinance, and fined and imprisoned; that he had instituted a proceeding, which was still pending, to test the ordinance; and that the council still threatened to fine and imprison him as long as he persisted in carrying on his business. The prayer was that the municipal authorities be enjoined until the validity of the ordinance was determined by the legal proceedings. The bill was dismissed, in the court below, for want of equity; and the case was carried to the supreme court, where the judgment of the lower court was affirmed, the higher court holding that "chancery will not restrain *quasi*-criminal proceedings by the authorities of a municipal corporation for repeated violations of an alleged invalid ordinance." This case was subsequently referred to in Port of Mobile v. Louisville & N. R. Co., *supra*, as not being at all in conflict with the decision rendered in that case.

The case made by the plaintiff in the court below falling within the general and well established rule applicable to cases in which an injunction is sought to restrain criminal or *quasi*-criminal proceedings, the judge committed no error in refusing to grant a temporary injunction. Judgment affirmed. All the justices concurring, except Cobb, J., absent for providential cause.

NOTE.—Courts of equity have no criminal jurisdiction. *In re* Debs, 158 U. S. 564. They have nothing to do with crime as such. State v. Patterson (Tex. Civ. App., Oct., 1896), 37 S. W. Rep. 478. They will not interfere solely to prevent crime. Hamilton, etc. Co. v. Savey, 131 Mo. 212. They will not enjoin its commission. Consolidated, etc. Co. v. Murray, 80 Fed. Rep. 811; Vegelahn v. Guntner, 167 Mass. 92; Klein v. Livingston Club, 177 Pa. St. 224. They will not aid the enforcement of an ordinance by restraining the commission of acts in violation thereof. Ellwood City v. Mani, 16 Pa. Co. Ct. 474; Rice v. Jefferson, 50 Mo. App. 464. The fact that a law is not enforced, is no reason why equity should extend its assistance in aid thereof. State v. Patterson, *supra*. Equity confines itself to the protection of property rights, and there must be some interference, actual or threatened, with such rights before its assistance can be invoked. *In re* Debs, 158 U. S. 564. When property or civil rights are involved, and an irreparable injury to such rights is threatened or is about to be committed, for which no adequate remedy exists at law, courts of equity will interfere by injunction for the purpose of protecting such right. State v. Patterson, *supra;* Elder v. Whitesides, 72 Fed. Rep. 724. Though such acts, done or threatened, involve a violation of the criminal law, yet under the circumstances stated a court of equity will enjoin their performance in order to protect those rights, leaving the punishment for such acts to the criminal courts. Hamilton, etc. Co. v. Saxey, 131 Mo. 212; Consolidated, etc. Co. v. Murray, 80 Fed. Rep. 811; Vegelahn v. Guntner, 167 Mass. 92; Klein v. Livingston Club, 177 Pa. St. 224; Predigested F. Co. v. McNeal, etc. Co., 4 Ohio Dec. 356; State v.

Schweickhardt, 109 Mo. 496. Many of the decisions make the unqualified statement, that a court of equity cannot enjoin the prosecution of a criminal proceeding. Predigested F. Co. v. McNeal, etc. Co., 4 Ohio Dec. 356; *In re* Sawyer, 124 U. S. 200; Hemsley v. Myers, 45 Fed. Rep. 283. This statement must be accepted with some limitations, of which an illustration is given in the principal case. Where a party to an equitable suit seeks by criminal proceedings to enforce the same rights which are in issue in the equitable suit, a court of equity will enjoin the further prosecution of the criminal proceedings. *In re* Sawyer, 124 U. S. 200; Predigested F. Co. v. McNeal, etc. Co., *supra*. Some of the federal courts have enjoined the further prosecution of criminal proceedings in the State courts on the ground, that the State laws were in conflict with the constitution of the United States, and that by federal statute parties, whose rights under the constitution were infringed upon, could institute proceedings in the federal courts either at law or in equity, for the protection of such rights. Injunctions against the prosecution of criminal proceedings in the State courts have been granted by the federal courts to protect rights under the interstate commerce provision in the constitution (M. Schandler B. Co. v. Welch, 42 Fed. Rep. 561; Louisiana v. Lagarde, 60 Fed. Rep. 186; Tuchman v. Welch, 42 Fed. Rep. 548; Denied in Hemsley v. Myers, 45 Fed. Rep. 283), and to preserve the obligations of a contract. Louisiana, etc. Co. v. Fitzpatrick, 3 Woods, 222. Whether courts of equity should ever enjoin criminal proceedings for the enforcement of municipal ordinances is a question over which there is much conflict of opinion. Such ordinances are frequently the acts of unskilled men, are not always legal, and their arbitrary enforcement may lead to much injustice. The right of injunction has been denied (Finegan v. Allen, 46 Ill. App. 553; Skakel v. Roche, 27 Ill. App. 423); it has been affirmed where its enforcement by criminal proceedings was an effort to harass the defendant, or to compel him to relinquish a valuable property right. Where a city instituted criminal proceedings against a party, and threatened to issue a warrant each day for obstructing public property, and there was a dispute as to whether the property obstructed belonged to the public, and the fine assessed in each case was below the limit fixed for appeals, the city was enjoined from further action till the property rights were determined. Skinkle v. Covington (City), 83 Ky. 420. In order to prevent an interference with charter rights and a multiplicity of suits, proceedings under an ordinance alleged to be illegal were stayed till the question of legality was passed on. South Covington, etc. R. R. v. Berry, 93 Ky. 43. It was also decided by the same court, that in order to prevent a multiplicity of suits or irreparable injury, equity may restrain the enforcement of a city ordinance, alleged to be illegal, until that matter is decided, and especially when such illegality is to be established by extrinsic evidence. Brown v. Catlettsburg, 11 Bush, 435; Newport v. Newport, etc. Co., 90 Ky. 193. The enforcement of an ordinance was stayed by injunction on the ground that it was void as to the complainant in a most material provision, denying to it its substantial rights, except on condition that it submit to unjust restrictions. Rushville v. Rushville, etc. Co., 132 Ind. 575; Central, etc. Co. v. Citizens', etc. Co., 80 Fed. Rep. 218. Where an injunction was under the circumstances denied, the court evidently considered it would be proper to grant it, if the prosecutions were instituted for the purpose of harassment. Kansas City, etc. Co. v. Kansas City, 29 Mo. App. 89. The most advanced position held by any court is that when an ordinance is void, any party whose interests are to be injuriously affected thereby, may go into a court of equity and have its enforcement enjoined. Davis v. Fasig, 128 Ind. 271. An ordinance forbidding the sale of liquors on Sunday, which was void as to sales by innkeepers to their guests and lawful travelers, was restrained from enforcement in such cases on the petition of an innkeeper. Ward v. Brooklyn, 14 Barb. 425. A party was allowed by ordinance to use an engine in a city, but was to remove it within six months after notice by the mayor so to do. He failed to remove it after notice, and sought an injunction against criminal proceedings against him under the ordinance. The injunction was granted on the ground that when an ordinance is void and its provisions are about to be enforced, any party, whose interests are to be injuriously affected thereby, may go into equity and have its enforcement stayed by injunction. Baltimore v. Radecke, 49 Md. 217. These last cases must be considered to be exceptional rulings, and the weight of authority is to the effect that it must be an extreme case wherein a court of equity will consent to enjoin the enforcement of a municipal ordinance.

S. S. MERRILL.

CORRESPONDENCE.

THE LAWS OF SISTER STATES.

To the Editor of the Central Law Journal:

The boast of the common law, that it keeps pace with the human advancement, and furnishes an aid and a remedy, as required, in all the complex affairs of men, adapting itself to new conditions as they arise, and furnishing forth rules adequate and sufficient for the determination of differences and disputes arising out of such new conditions, has not been made good, in this American country as regards, at least, transactions across the borders of our States and territories. Whether the boundaries between the States be natural or artificial, the business interests of the country have shown a refreshing and commendable disregard of them, and the birds of commerce fly from New York to San Francisco and back again, from the lakes to the gulf and back again, as readily, and perhaps, almost as often as they minister to their own kindred in their own vicinage. That, in a commercial sense, State boundaries and State jurisdictions are so far unconsidered as to be regarded as practically non-existent, is readily ascertainable by even a casual consideration of a railway map of the country,—showing these great arteries of commerce running from everywhere to everywhere in utter disregard of State lines. And thus we see business men,—the New Yorker and the Texan, the Kansan and the Virginian, buying and selling, one with another; while the genius of the common law sits within her own vicinage and sees with unerring eye and administers with impartial hand, the rules for the regulation of business transactions within her own domicile, but beyond the arbitrary boundaries of her own jurisdiction, there is to her naught but the impenetrable darkness of collossal ignorance. As a result of this indiscriminate buying, selling and dealing, each year adds to the list of cases arising in each of the States of the Union, which require for determination the application, in whole or in part, of the laws, written or unwritten, of a sister State. No one rule of the common law has been productive of more incongruities, more absurdities, nor of more often absolute failure of justice, than that rule which forbids the judiciary of one State to take judicial notice of the

laws of another. If any lawyer doubts this statement, let him verify it by an examination of his own State reports. Whenever it becomes necessary to determine what the law is at home on a given proposition, and when there is no precedent at home, the courts of each of the States turn, with the utmost freedom and confidence, to the adjudications of sister States upon the same proposition. In construing statutory and constitutional provisions of their own jurisdiction, all the courts of the country quote freely similar enactments in other States and the decisions of the courts thereon. Texas and Iowa have a statute, and Kentucky a constitutional provision, forbidding common carriers of goods from limiting their common law liability by contract. These different enactments are practically one in result, and in construing the Texas statute, the Texas courts quote and consider the Iowa and Kentucky enactments and the interpretations placed thereon by the courts of the two States; and thus, in arriving at a conclusion as to what the law is in Texas, take judicial cognizance and display full knowledge of what the law is in Iowa and Kentucky. But let a case arise in Texas, involving such a contract, which should be construed by the laws of the State of Iowa or Kentucky, and the court will promptly disclaim all knowledge of the law of the given State on the subject, unless it be proven as a fact. And then, crowning inconsistency of this bundle of inconsistencies; when it is offered in proof, its existence is not, like other questions of fact, for the jury to determine, but a question for the court to decide. No reflection is meant here on the Texas courts; the foregoing is merely an imaginary illustration of a condition which prevails in every State in the Union so far as the writer's knowledge runs. When this rule of the common law was promulgated by the early English judges, England was the only country rendering obedience to her common law system. The judicial systems of her neighbors were totally dissimilar; and, owing to the little social and commercial intercourse with them at the time and to the dearth of means for the dissemination of knowledge, it is quite probable that their refusal to take judicial notice of foreign laws had, to rest upon, a good, solid foundation of lack of knowledge as to what the foreign law actually was. But the rule, so far as applied by us to the laws of sister States and territories of the United States, never was germane to our institutions; and, while, perhaps, in the earlier history of the country, there was some lack of opportunity to be informed: in these, the closing years of the nineteenth century, there is practically none. The existence of the rule among us is but another evidence of the blind reverence of the common law for a precedent, and furnishes forth the exception necessary to establish the maxim that when the reason for the rule ceases, the rule itself ceases. It is believed that, under conditions as they now exist with us, no solid, substantial reason can be assigned why the courts of any given State or territory should not take judicial notice of the laws, both written and unwritten, of each of the other States and territories, whenever a pending cause requires the determination and application thereof. If it be said that they may not always be accessible, the writer would humbly suggest, in reply, that they will probably always be as accessible for judicial consideration, as they will be for introduction in evidence. If it be said that the courts will always enforce the law of a sister State in a proper case, if proffered in evidence, the writer would suggest that courts sit to administer justice and not to punish litigants for the mistakes of their counsel; and that such mistakes on this question have often led to unjust results, *vide* any set of State reports. Although no plausible reason can be assigned for this rule of self-imposed judicial ignorance, still, Ossa of decision has been so piled on Pelion of precedent, that there is scarcely a hope that the courts will ever be able to extricate themselves from this difficulty of their own making. The only hope for present relief from this incongruous position, lies with the lawmakers of the different jurisdictions; and to such the writer would respectfully recommend it as worthy of attention.

St. Louis. F. H. SULLIVAN.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions, and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

1. ACCIDENT INSURANCE—Excepting Clauses.—Under an accident policy excepting from the risks "voluntary exposure to unnecessary danger," an accident is not within the exception unless the insured was aware of the danger he incurred, and purposely assumed the risks thereof.—ASHENFELTER V. EMPLOYERS' LIABILITY ASSUR. CORP. OF LONDON, ENGLAND, U. S. C. C. of App., Ninth Circuit, 87 Fed. Rep. 682.

2. ACCIDENT INSURANCE—Suicide.—Rev. St. Mo. 1889, § 5855, which provides that in suits "upon policies of life insurance," suicide shall be no defense, although the policy may contain stipulation to the contrary, does not apply to accident policies, although Rev. St. Mo. 1889, § 5811, authorizes life insurance companies to engage in the business of accident insurance, declaring, however, that "such accident insurance shall be made a separate department of the business of a life insurance company undertaking it."—TICKTIN V. FIDELITY & CASUALTY CO. OF NEW YORK, U. S. C. C., W. D. (Mo.), 87 Fed. Rep. 543.

3. ACTION—Venue—Title to Land.—An equitable petition against a man and his wife for the purpose of subjecting to judgments against the former, held by the plaintiffs, land to which the wife, was alleged, fraudulently and in collusion with him claimed title, in order to defeat the collection of the plaintiff's claims, was properly brought in the county of the residence of the husband and wife, although the land was situated in another county.—HIX V. KISER, Ga., 30 S. E. Rep. 583.

4. ADMINISTRATION — Distribution.—An administrator, who undertakes, without an adjudication of heirship, to distribute funds in his hands as the residue of an estate administered by him, assumes the responsibility of making distribution to the proper persons.—BOALES v. FERGUSON, Neb., 76 N. W. Rep. 18.

5. ADMINISTRATION — Foreign Administrators — Actions.—An action commenced in Virginia by a foreign administrator without first taking out letters of administration in that State is a mere nullity, and no life can be imparted to it by subsequently procuring such letters, and then setting up the fact by amendment of the pleadings.—LUSK'S ADMRS. v. KIMBALL, U. S. C. C., W. D. (Va.), 87 Fed. Rep. 545.

6. ADOPTION — Contracts to Devise.—Though a contract of adoption be invalid as such, a court of equity will enforce a promise therein that the child sought to to be adopted should receive a child's share of the estate of the promisor on his death, in return for her companionship, love, and obedience.—BURNS v. SMITH, Mont., 53 Pac. Rep. 742.

7. ADVERSE POSSESSION.—Where a grandfather has made a parol gift of land to his grandson, who is a minor at the time, and the father enters into possession of the land for his son, such possession will inure to the benefit of the son, and can be made the basis of a recovery in an action against one holding adversely.—DASHER v. ELLIS, Ga., 30 S. E. Rep. 544.

8. ADVERSE POSSESSION — Color of Title — Life Tenants.—Where the tenant for life and the remainder-man resided together on the land, the possession of the life tenant, who was the remainder-man's guardian, and the payment of the taxes by him, were *prima facie* not for the purpose of creating a title in the remainder-man in bar of the life estate.—WRIGHT v. STICE, Ill., 51 N. E. Rep. 71.

9. APPEAL — Jurisdiction of — Federal Questions.—Where defendant, in his answer, alleges a compliance with a statute of the United States, and plaintiff replies with a general denial, the compliance with the statute, and not the validity thereof, is in issue, and the supreme court has no appellate jurisdiction of the suit under Const. art. 6, § 12, giving it appellate jurisdiction of cases involving the validity of a statute of the United States.—VAUGHN v. WABASH R. CO., Mo., 46 S. W. Rep. 952.

10. APPEAL — Jurisdiction of Supreme Court.—In an action to recover damages, the instruction, "To hold the defendant liable in this case would violate its rights guarantied by the constitution of the State of Missouri and of the United States," was properly refused, and was insufficient to raise a constitutional question giving the supreme court jurisdiction on appeal.—HULETT v. MISSOURI, K. & T. RY. CO., Mo., 46 S. W. Rep. 951.

11. ASSIGNMENT FOR BENEFIT OF CREDITORS.—There is no objection to the validity of an assignment made in anticipation on the part of the assignor of the immediate issuing of an attachment against the property of the assignor.—BILLINGS v. PARSONS, Utah, 53 Pac. Rep. 780.

12. ATTACHMENT — Attached Property.—Where attached property is left by the sheriff in rooms of an office building occupied by the defendant, in charge of a watchman, not a deputy sheriff, under the impression that no rent or storage would be charged, and that it would be removed on demand of the landlord, a notice to the watchman that rent would be charged is not notice to the sheriff sufficient to charge him with the rent.—NORTHWESTERN MUT. LIFE INS. CO. v. HILL, Tenn., 46 S. W. Rep. 1009.

13. ATTACHMENT — Suit against National Bank.—In a suit begun in a State court against a national bank, no attachment can issue until after final judgment.—ROSENHEIM REAL ESTATE CO. v. SOUTHERN NAT. BANK, Tenn., 46 S. W. Rep. 1026.

14. BANKS—Checks — Forgery of Payee's Name.—The payee of a check collected by the forging of payee's indorsement by its employee, is not precluded from recovering on it from the drawer because of its negligence in not discovering, by an examination of its books, that such employee had previously forged and collected many checks sent to it by its customers.—SHEPARD & MORSE LUMBER CO. v. ELDRIDGE, Mass., 51 N. E. Rep. 9.

15. BANKS—Payments on Forged Checks.—A payment by a bank to the holder of a check on which the name of the payee or indorsee is forged makes the bank liable to the depositor as if the pretended payment had not been made, since nothing but actual payment, accord and satisfaction, or a release under seal, is an answer to the depositor's demand.—WINSLOW v. EVERETT NAT. BANK, Mass., 51 N. E. Rep. 16.

16. BICYCLE—Turnpikes—Toll.—A turnpike company, by its charter, was empowered to collect toll for every carriage drawn by one or more beasts, which traveled over its road, and to stop any person driving any carriage of burden or pleasure, who attempts to pass its gates without having paid the specified toll. Held, that this charter provision did not authorize the exaction of toll from a bicycle rider traveling along the company's turnpike upon his wheel.—GLOUCESTER & S. TURNPIKE CO. v. LEPPER, N. J., 40 Atl. Rep. 681.

17. BILLS AND NOTES — Bona Fide Purchasers.—The fact that there was usury in a note, as between maker and payee, or that the maker signed the note without reading it, and in ignorance of a waiver of exemption and provision for attorney's fee contained therein, is not a defense to a suit on the note by an innocent purchaser for value before maturity.—ORR v. SPARKMAN, Ala., 23 South. Rep. 829.

18. BILLS AND NOTES — Certificate of Protest.—A certificate of protest of a note—presumptive evidence of the facts therein stated, under How. Ann. St. § 632—is not sufficient evidence of due presentment and demand, so as to bind the indorsers, where the notary certified that he had "this day protested for non-payment the annexed" note, without stating the place, manner, and person to whom the presentment was made.—UNION NAT. BANK OF TROY v. WILLIAMS MILLING CO., Mich., 76 N. W. Rep. 1.

19. BILLS AND NOTES — Indorsement of Note—Intent.—If, upon the back of a promissory note payable to a particular person or his order at a chartered bank, a third person writes his name before delivery to the payee, whether such third person is liable as an original promisor, surety, guarantor, or indorser depends upon what was his real intention, as understood by the other parties, at the time of the transaction. In such case, the person so signing has a right, in defense to an action against him upon the note by the payee, to plead and prove the real relation he assumed in placing his name upon the paper.—ATKINSON v. BENNETT, Ga., 30 S. E. Rep. 599.

20. BILLS AND NOTES—Note—Construction.—A promissory note, payable generally "after date," and not otherwise expressing any time for payment, is payable on demand, and therefore, under section 3700 of the Civil Code, due immediately.—HOTEL LANIER CO. v. JOHNSON, Ga., 30 S. E. Rep. 558.

21. BILLS AND NOTES—Warrant of Attorney—Confession of Judgment.—A promissory note with warrant of attorney to confess judgment thereon should be so interpreted as to give effect to the intention of the parties; and a judgment thereon confessed against the makers is not void for want of jurisdiction of their persons if the terms of the warrant indicate an intention to authorize it, notwithstanding a failure to fill blanks intended to be filled with words giving fuller expression to that intention.—FIRST NAT. BANK OF FINDLAY v. TROUT, Ohio, 51 N. E. Rep. 27.

22. BOUNDARIES—Witnesses.—Rev. St. 1889, § 8312, providing that no survey or resurvey thereafter made by any person, except the county surveyor, shall be considered legal evidence, does not render any surveyor incompetent to testify as to a survey or the correctness of a plat thereof made by him.—HOPPER v. HICKMAN, Mo., 46 S. W. Rep. 978.

23. BUILDING CONTRACT—Release of Surety.—A building contract provided that, if the contractor should fail to supply a sufficiency of properly skilled workmen or of materials of the proper quality, or to prosecute the work with promptness and diligence, the owner might, upon securing a certificate of the architect to the fact of such failure, and after giving three days' notice to the contractor, enter upon the premises and finish the work. Held, that such provision contemplates a case where the contractor claims to be complying with his obligation, and not a case where the contractor, before doing any substantial part of the work, absolutely abandons it, and voluntarily surrenders the premises to the owner for its completion. Held, also, that neither the failure to secure the architect's certificate and give the three days' notice to the contractor, nor the waiver of them by the contractor, under such circumstances, will release the surety on the contractor's bond.—GEORGE A. FULLER CO. v. DOYLE, U. S. C. C., E. D. (Mo.), 87 Fed. Rep. 687.

24. CARRIERS—Goods—Remedy of Consignor.—Where a consignee of freight refuses to receive goods on account of damage done to them in the hands of the common carrier, and the goods are subsequently thrown back on the hands of the consignor, the latter has a right to bring an action for such damages against the carrier.—SAVANNAH, F. & W. RY. CO. v. COMMERCIAL GUANO CO., Ga., 30 S. E. Rep. 555.

25. CONSTITUTIONAL LAW—Ex Post Facto Laws—Construction of Statutes.—In order to render legislation unconstitutional as *ex post facto*, it is not necessary to show that it must be detrimental to all persons charged with offenses; it is sufficient that it materially alters their condition in a manner which may be detrimental to some.—IN RE MURPHY, U. S. C. C., D. (Mass.), 87 Fed. Rep. 549.

26. CONSTITUTIONAL LAW—Statute Validating Former Invalid Contract.—Plaintiff sued on a county warrant, and was defeated on the ground that the county commissioners had no authority to contract for the services the warrant was given for. The State legislature afterwards passed an act authorizing contracts of a like nature, and validating those theretofore made. Held, that the act was not unconstitutional, either as an exercise of judicial power or a deprivation of the county of its property without due process of law, nor was it in violation of the provision forbidding donations to individuals.—ERSKINE v. STEELE COUNTY, U. S. C. C., D. (N. Dak.), 87 Fed. Rep. 630.

27. CONTRACTS—Breach.—Under a contract whereby the contractor agreed to furnish piling to a railway company at a specified price, and agreed to keep a specified amount thereof on hand at sidings ready for shipment, a failure to keep such amount on hand operates as a breach of the contract, and releases the railway company from a compliance with its terms.—MISSOURI PAC. RY. CO. v. YARNELL, Ark., 46 S. W. Rep. 943.

28. CONTRACTS — Conflict of Laws.—Complainants, husband and wife, consulted their attorney at Memphis, Tenn., about securing a loan on Mississippi real estate. He advised them to visit the office of a loan company at Vicksburg, Miss., with him, which the husband did. A bargain was struck, and papers drawn, which were sent to Memphis for the wife's signature. The notes were payable in New York, and the money was sent from Vicksburg to Memphis to complainants. The attorney received a commission on loans from the company. Held, that the contract was a Mississippi contract, to be construed by the laws of Mississippi.—GLONER v. EQUITABLE MORTG. CO. OF KANSAS CITY, U. S. C. C. of App., Fifth Circuit, 87 Fed. Rep. 518.

29. CONTRACTS—Consideration.—Although it is the general rule that at common law a seal affixed to a written instrument imports a consideration, yet equity disregards such forms, and looks to the reality, and requires an actual consideration, and permits the want of it to be shown notwithstanding the seal.—HALE v. DRESSEN, Minn., 76 N. W. Rep. 31.

30. CONTRACTS—Pleading and Proof—Variance.—No recovery can be had on a declaration alleging a sale of a team of horses directly to defendant, who paid for them by a note, which he represented was good and collectible, but which was worthless, where the proof shows that defendant sold the horses as plaintiff's agent to a third person, and accepted in payment paper which he was unauthorized to receive, and which plaintiff accepted upon false representations.—BILSBORROW v. WARNER, Mich., 76 N. W. Rep. 7.

31. CONTRACTS—Pleading—Consideration.—A petition setting out a contract in writing and under seal, whereby defendant, in consideration of the fact that he had instituted and was prosecuting a suit to set aside the will of their deceased father, and of the payment to him by plaintiff of one dollar and the costs and attorneys' fees incurred, promise to pay plaintiff a certain sum out of his share of decedent's estate, if he should succeeed in annulling such will, and alleging compliance with the terms of such contract on plaintiff's part, and the successful issue of such suit, showed a valuable consideration for such promise by defendant, and therefore stated facts sufficient to constitute a cause of action.—RIDENBAUGH v. YOUNG, Mo., 46 S. W. Rep. 959.

32. CONTRACTS—Rescission.—Where a party seeks to rescind a contract, he must act with reasonable dispatch and promptitude, and not wait until the rights of third parties have become materially involved; and if, knowing all the facts, he voluntarily ratifies the contract, by treating the consideration received as his own, and the other party cannot be put back in *statu quo*, a rescission will not be permitted.—WHITCOMB v. HARDY, Minn., 76 N. W. Rep. 29.

33. CONTRIBUTION BETWEEN JOINT MAKERS OF A NOTE.—Plaintiff and defendant and three others borrowed money from a bank on their joint note to pay the price of a horse purchased in common, each agreeing to pay his ratable share thereof. Defendant paid his share, and the others executed a new joint note for the balance, on which judgment was obtained against them, two of whom were insolvent. Plaintiff was compelled to pay, in addition to his own share of the judgment, the shares of the insolvents. Held, that defendant was liable to contribute his ratable share of the amount paid by plaintiff in excess of his share of the debt.—NORRIS v. CHURCHILL, Ind., 51 N. E. Rep. 104.

34. CONTRACT OF INFANT.—A written agreement by a minor to work as an apprentice for a stated compensation, and under which he continued to serve after attaining majority, though it be insufficient as an indenture of apprenticeship, because not executed in compliance with Pub. St. ch. 149, relating to apprentices, is competent evidence, in connection with his acceptance of wages thereunder, and other acts, as tending to show a ratification and affirmance of the contract.—MCDONALD v. SARGENT, Mass., 51 N. E. Rep. 17.

35. CORPORATIONS—Dividends on Stock—Powers of Directors.—While it is largely a matter of discretion with the directors whether to declare a dividend out of the profits, or use them in the business of the company, there is a limit to this discretion; and the courts will not allow them to oppress the holders of preferred stock by refusing to declare dividends when the net profits and character of the business clearly warrant dividends.—STORROW v. TEXAS CONSOLIDATED COMPRESS & MANUFACTURING ASSN., U. S. C. C. of App., Fifth Circuit, 87 Fed. Rep. 612.

36. CORPORATIONS—Rental of Property.—A private corporation has the power to temporarily rent its property to individuals for the purpose of raising money necessary to pay a pressing indebtedness, which could not be otherwise met, when it appears that such a temporary disposition of its property is necessary for its protection, was entered into in good faith, and was to the interest of all the stockholders; and when it further appears that there was no purpos

of the corporation to abandon its franchises or corporate powers, but, on the contrary, its manager, under the contract of rental, was to remain in charge of the property, and look after the interest of the corporation, during the term of the tenancy.—PLANT v. MACON OIL & ICE CO., Ga., 30 S. E. Rep. 567.

37. CORPORATIONS—Stockholders—Liability.—Where one subscribes for part of an increased issue of national bank stock, but actually receives original stock instead, and holds it for several years, receiving dividends and paying assessments thereon, he will be liable, upon failure of the bank, to assessment on such stock by the comptroller of the currency.—RAND v. COLUMBIA NAT. BANK OF TACOMA, WASH., U. S. C. C., D. (Minn.), 87 Fed. Rep. 520.

38. CRIMINAL LAW—Burglary—Indictments.—An indictment charging the property stolen to have been owned by W, and evidence that it was owned by his wife and child, does not constitute a variance, since Code Cr. Proc. 1895, art. 445, allows the ownership of property of a married woman to be alleged in her or in her husband.—MCGEE v. STATE, Tex., 46 S. W. Rep. 930.

39. CRIMINAL LAW—Homicide.—An instruction that one in charge of a house has no right to shoot persons breaking and entering except in self-defense, and that if he does so they have the right to defend themselves to the extent of taking life if necessary, and that if persons enter a house with no common design to kill, and a party in charge shoots at them, and they shoot the keeper, they are not guilty of a crime greater than manslaughter, was properly refused where the court charged that one in protection of his dwelling house may arrest one attempting to break and enter, and, if he resist, may use force sufficient to effect the arrest.—STATE v. CANNON, S. Car., 30 S. E. Rep. 589.

40. CRIMINAL LAW — Larceny—Recent Possession.—Where one on trial for stealing hogs testified that he got possession of them with the consent of prosecutor, of whom he purchased them, and the defense of purchase was sufficiently submitted, he was not entitled to a charge on circumstantial evidence.—REED v. STATE, Tex., 46 S. W. Rep. 981.

41. CRIMINAL LAW—"Maim" and "Mayhem."—"Maim" and "mayhem" are, at common law, equivalent words, and mean the same thing. Therefore, a count in an indictment charging the defendant with maliciously biting the ear of another with intent to maim cannot be supported as to the particular intent charged, as the biting of an ear does not, in law, constitute a maiming.—STATE v. JOHNSON, Ohio, 51 N. E. Rep. 40.

42. CRIMINAL LAW — Perjury — Joint Indictment.—Where two defendants joined in a false affidavit for a continuance, signing it together, being sworn together, and one certificate of oath being attached, an indictment charging both with perjury is not joint only, but joint and several.—STATE v. WINSTANDLEY, Ind., 51 N. E. Rep. 92.

43. CRIMINAL LAW — Rape.—An information charging defendant, as principal, with rape, in having carnal knowledge of prosecutrix, and evidence that he was only an accessory before the fact, constitutes a fatal variance, notwithstanding Code, § 1189, provides that no distinction shall exist between an accessory before the fact and a principal, and that all persons connected with a crime shall be indicted, tried, and punished as principals, since the information is in contravention of Const. art. 1, § 22, providing that the accused shall have the right to demand the nature and cause of the accusation against him.—STATE v. GIFFORD, Wash., 53 Pac. Rep. 709.

44. DEEDS—Covenants—Rescission.—The refusal of a grantor of premises to keep an agreement in a deed to at once begin proceedings in chancery to have several recorded liens on the premises released, which both parties, before the execution of the deed, supposed were not a valid charge against the premises, did not give the grantee the right to rescind the sale where he had remained in peaceable possession, and had not demanded a rescission for such refusal until several years afterwards, when the grantor sued him to enforce a vendor's lien.—EGAN v. YEAMAN, Tenn., 46 S. W. Rep. 1012.

45. DEED—Reservation—Construction.—A deed excepted from the premises conveyed a portion of which had prior thereto been conveyed to a railroad for a right of way. The conveyance to the railroad was an easement in a right of way across the premises, terminating on its ceasing to be occupied for railroad purposes. Held, that the exception in the deed was an exception of the fee to the right of way, and not merely an exception of the railroad company's easement.—REYNOLDS v. GAERTNER, Mich., 76 N. W. Rep. 3.

46. DEEDS—Wife's General Estate.—A deed of a married woman conveying property given to her as her general estate is void where there is no privy examination of her.—DAVIS v. BOWMAN, Tenn., 46 S. W. Rep. 1039.

47. DIVORCE—Alimony — Specific Real Estate.—In an action for a divorce, it is proper to decree the conveyance of specified real estate as alimony.—REEVES v. REEVES, Mich., 76 N. W. Rep. 4.

48. EASEMENT—What Constitutes.—One who opens a road over his premises, for his own use, without dedicating it to the public, may prevent others from traveling on it.—HAGAR v. WILSON, Tenn., 46 S. W. Rep. 1033.

49. EVIDENCE—Declarations.—The declaration of a party, immediately after he had fallen through a bridge, that he was badly hurt, is admissible.—HAWKS v. TOWN OF CHESTER, Vt., 40 Atl. Rep. 727.

50. EVIDENCE — Physicans — Value of Services.—A physician may testify as to the reasonableness of a bill for medical services.—WARD v. OHIO RIVER & C. RY. CO., S. Car., 30 S. E. Rep. 594.

51. FALSE IMPRISONMENT—Liability of Sheriff.—Where a sheriff, by his deputy, places a warrant received from another county in the hands of a constable, with instructions to arrest a certain person, and the constable does so, and the sheriff confines him in jail, the sheriff and the sureties on his official bond are liable for damages for such arrest and imprisonment if the person arrested, though similar in name, is not the person specified in the warrant.—CLARK v. WINN, Tex., 46 S. W. Rep. 915.

52. FEDERAL OFFENSE — National Banks—Officers.—In a prosecution against a national bank president for unlawfully certifying checks, it is not error to instruct the jury that the presumption is that he had knowledge of the condition of the account upon which the checks were drawn, where the same instruction cautions them that such presumption may be rebutted by evidence that the defendant did not in fact have such knowledge.—SPURR v. UNITED STATES, U. S. C. C. of App., Sixth Circuit, 87 Fed. Rep. 701.

53. FRAUDS, STATUTE OF — Pleading.—In a suit for damages growing out of a breach of contract, required by the statute to be in writing, the petition is not demurrable upon the ground that it does not set forth whether or not the contract was in writing.—DRAPER v. MACON DRY-GOODS CO., Ga., 30 S. E. Rep. 566.

54. FRAUDS, STATUTE OF — Vendor and Purchaser.—Grantor deeded land to her son to permit him to perfect a trade for certain mill property, with the parol agreement that, if the trade was made, he should pay her a certain price, and secure the payment by a mortgage on said mill property; but, if the trade fell through, the land was to be conveyed, and she was to retain possession until the trade was made. Held that, on failure to make the trade, equity will decree a specific performance of the parol agreement to reconvey, notwithstanding the statute of frauds, since grantor stands in the position of a purchaser having paid the consideration and taken possession.—SIMONTON v. GODSEY, Ill., 51 N. E. Rep. 75.

55. GAMBLING CONTRACT — Option Trades.—Where purchases and sales of stocks on margins are mere

wagering contracts, intended to be settled by payment of differences, without any intention of delivery, margins deposited and profits earned by the rise or fall of the market cannot be recovered.—NORTHRUP v. BUFFINGTON, Mass., 51 N. E. Rep. 7.

56. GARNISHMENT AGAINST NON-RESIDENT.—The courts of one State have no jurisdiction to attach and condemn a debt, due to and payable to a non-resident where he resides, by service of process on his debtor as garnishee, in the absence of personal service on the creditor within the State of the forum or his voluntary appearance.—LOUISVILLE & N. R. CO. v. NASH, Ala., 23 South. Rep. 829.

57. HABEAS CORPUS—Extradition.—In the trial of a *habeas corpus*, sued out for the liberation of one who is sought to be extradited for the violation of the criminal laws of another State upon a warrant of the governor issued upon a requisition of the demanding State, it is not admissible to hear evidence upon, or inquire into, the motives or purposes of the prosecution.—BARRANGER v. BAUM, Ga., 30 S. E. Rep. 524.

58. INJUNCTION PENDENTE LITE—Condemnation Proceedings.—An application for an injunction *pendente lite* is addressed to the sound discretion of the court, and will be granted only to prevent irreparable injury; hence a corporation having instituted proceedings for the condemnation of land, and a controversy having arisen as to the value thereof, an injunction will not issue to restrain the corporation from entering upon the land until the termination of the condemnation suit, where the corporation has given bond in a sum sufficient to cover all damages, and the whole controversy appears to be rather an attempt to defeat the purpose of the corporation than a simple contest as to the value of the land.—DAVIS v. PORT ATHUR CHANNEL & DOCK CO., U. S. C. C. of App., Fifth Circuit, 87 Fed. Rep. 512.

59. INSURANCE—Proofs of Loss—Waiver.—A provision in a Michigan standard policy that no agent shall have power to waive any of its conditions, except by a writing indorsed on or attached to the policy, is valid, and a verbal waiver of proofs of loss by him is not binding on the company.—WADHAMS v. WESTERN ASSUR. CO., Mich., 76 N. W. Rep. 6.

60. INTOXICATING LIQUORS—Surreptitious Shipment.—One is not liable under Rev. St. U. S. § 3449, making it an offense to ship any liquors "under any other than the proper name or brand known to the trade as designating the kind and quality of the contents of the cases or packages containing the same," for shipping a keg of whisky on which the proper tax had been paid, and which had the proper brand affixed, packed inside of a sugar barrel which contained no brand at all.—UNITED STATES v. STEGE, U. S. D. C., D. (Ind.), 87 Fed. Rep. 553.

61. JUDGMENT—Infants—Guardian Ad Litem.—Where infant defendants have been regularly summoned, the failure to appoint a guardian *ad litem* to represent them is an error merely, and does not render void the judgment entered.—MANFULL v. GRAHAM, Neb., 76 N. W. Rep. 19.

62. JUDICIAL SALE—Confirmation—Refusal to Comply with Bid.—In every judicial sale there is an implied condition that, if the purchaser fails to complete it, the property may be resold at his risk, and that, if it brings a less price at the second sale, he is liable for the deficiency, together with the costs of the sale. This liability is in the nature of liquidated damages, and, where a resale has been had, constitutes the measure of the recovery; and if for any reason plaintiff is not entitled to such damages, no recovery whatever can be had.—HOWISON v. OAKLEY, Ala., 23 South. Rep. 810.

63. LANDLORD AND TENANT — Surrender of Lease.—A greater estate than for a term of one year may be surrendered otherwise than in writing. Any reciprocal acts which amount to an agreement for abandonment of possession by the tenant, and resumption thereof by the landlord, constitute a surrender by operation of law.—HART v. PRATT, Wash., 53 Pac. Rep. 711.

64. LICENSE—Revocation.—A license to use a strip of land as a private road for an indefinite time in consideration of the licensee fencing it is revocable at the pleasure of the owner.—COOK v. FERBERT, Mo., 46 S. W. Rep. 947.

65. LIFE INSURANCE—Premiums.—The beneficiary of an insurance policy takes his interest subject to a condition of the policy that it shall be void unless premiums are paid when due.—FORBES v. UNION CENT. LIFE INS. CO., Ind., 51 N. E. Rep. 84.

66. LIFE INSURANCE — Proof of Death—Recitals.—The beneficiary under a policy is not estopped, by statements made in good faith, on information from the attending physician, in the proofs of loss, as to the cause of death of assured, to show that he died of something else.—JOHN HANCOCK MUT. LIFE INS. CO. v. DICK, Mich., 76 N. W. Rep. 9.

67. LIFE INSURANCE—Warranties as to Health.—An accident policy recited that it was in consideration of the warranties in the application, and that no waiver should be claimed by reason of acts of agents not authorized in writing. The application contained untrue answers as to the past health of assured which were warranted to be true, and the application stated that applicant had not concealed anything material to be known to insurer. Held, that the answers avoided the contract, and this though the agent had knowledge, when soliciting the risk, that they were untrue.—KETCHAM v. AMERICAN MUT. ACC. ASSN., Mich., 76 N. W. Rep. 5.

68. LIMITATIONS—Effect on State.—The rule that statutes of limitation do not run against the State unless it is expressly so provided is applicable in actions where the State, though not a party to the record, is the real party in interest.—WASTENEY v. SCHOTT, Ohio, 51 N. E. Rep. 34.

69. MARRIAGE—Nullity.—When a woman who is with child conceals that fact, and induces a man who has had no sexual relations with her to go through the ceremony of marriage to her in good faith, and the man, on discovering the truth, separates from her, and files his bill in this court for a declaration that the supposed marriage contract is a nullity, because of the fraud she has put upon him, he is entitled to a decree that the supposed marriage has been void *ab initio*.—SINCLAIR v. SINCLAIR, N. J., 40 Atl. Rep. 679.

70. MARRIED WOMAN—Sale of Separate Estate.—A sale by a married woman of property belonging to her separate estate, though made for the sole purpose of raising money with which to pay a debt or liability of her husband, is nevertheless valid and binding upon her, even if the purchaser, he not being a creditor of the husband, and having nothing to do with any arrangement or transaction between the husband and wife looking to the making of such sale, knew that the proceeds thereof were to be applied for the purpose stated.—NELMS v. KELLER, Ga., 30 S. E. Rep. 572.

71. MASTER AND SERVANT—Fellow-servant.—A sawyer was running a saw in a lumber mill, and a millwright was repairing beams over the bench where he worked. The millwright carelessly left on a beam a chisel, which fell, and injured the sawyer. Held, that they were not fellow-servants.—HAMMARBERG v. ST. PAUL & T. LUMBER CO., Wash., 53 Pac. Rep. 727.

72. MASTER AND SERVANT—Injury to Servant.—Where the contract of hiring requires the workmen to provide or erect the scaffold upon which to work, the employer is not responsible for injuries sustained by defects therein.—MAUGHMER v. BERING, Tex., 46 S. W. Rep. 917.

73. MASTER AND SERVANT—Personal Injuries—Pleading and Proof.—Proof that a servant was injured by using a defective machine does not prove an allegation that the defect caused the injury.—PLEFKA v. KNAPP, STOUT & CO. COMPANY, Mo., 46 S. W. Rep. 974.

74. MORTGAGES—Cancellation.—It is competent, in defense of an action or proceeding to foreclose a mortgage, or in an action to restrain such foreclosure, and to have the apparent lien of the mortgage canceled, to

show that there is nothing due on the mortgage (although it is under seal), because there was no consideration for the note or obligation it purports to secure. —ANDERSON v. LEE, Minn., 76 N. W. Rep. 24.

75. MORTGAGES—Foreclosure—Complaints.—A complaint against the grantees of mortgaged premises to foreclose the mortgage, alleging a subsisting cause of action on a note against the mortgagor, the execution of the mortgage when mortgagor was the owner in fee of the property, and that defendants claim an interest as remote grantees of mortgagor, states a cause of action, notwithstanding it is not specifically alleged that defendants' claim was junior and inferior to plaintiff's claim under the mortgage.—HOHL v. REED, Kan., 53 Pac. Rep. 676.

76. MORTGAGES—Foreclosure—Trustees.—A holder of bonds secured by a general mortgage to a trustee for the benefit of all the bondholders, although the right to sue belongs to him individually, may not bring a suit to foreclose the mortgage either for the interest or the principal due, without alleging that the trustee has been requested to bring the suit, and has refused, or without showing some other reason why the trustee may not represent him in the suit.—GENERAL ELECTRIC CO. v. LA GRAND EDISON ELECTRIC CO., U. S. C. C. of App., Ninth Circuit, 87 Fed. Rep. 590.

77. MORTGAGES—Independent Notes—Distribution of Proceeds.—On foreclosure of a mortgage executed by a principal debtor to his sureties for their indemnity with respect to independent notes previously executed to different payees, and having different dates of execution and maturity, the payees of such notes are entitled, by subrogation, to participate in the proceeds of the sale in proportion to the sums respectively due them; there being no priority of lien incident to the note of earlier maturity.—COONS v. CLIFFORD, Ohio, 51 N. E. Rep. 39.

78. MORTGAGES — Subrogation — Priorities.—Where money is loaned under an agreement that it shall be used in the payment of a lien on real estate, and it is so used, and the agreement is that the one who so loans the money shall have a first mortgage lien on the same lands to secure his money, and through some defect in the new mortgage, or oversight as to other liens, the money cannot be made on the last mortgage, the mortgagee has a right to be subrogated to the lien which was paid by the money so by him loaned, when it can be done without placing greater burdens upon the intervening lienholders than they would have borne if the old mortgage had not been released, but not as against a *bona fide* lienholder who acquired his lien after the release of the old mortgage, without notice of such agreement and payment.—STRAMAN v. RECHTINE, Ohio, 51 N. E. Rep. 44.

79. MUNICIPAL CORPORATIONS—Delegation of Powers. —The rule which forbids the delegation of powers granted to a municipal corporation does not apply to the delegation by such corporation of ministerial or administrative functions to subordinate officials. The distinction is between cases in which a discretion must be exercised by the governing body and the performance of merely ministerial duties by its agents. In the former case the duty committed to the local government cannot be delegated; in the latter case it may act through its authorized officials or agents.—STATE v. COMMON COUNCIL OF ASBURY PARK, N. J., 40 Atl. Rep. 690.

80. MUNICIPAL CORPORATIONS—Donation for Manufacturing Plant.—A municipal corporation is without capacity to acquire land by purchase for the purpose of donating the same to a corporation or person as an inducement to build and operate manufacturing plants within the municipality.—MARKLEY v. VILLAGE OF MINERAL CITY, Ohio, 51 N. E. Rep. 28.

81. MUNICIPAL CORPORATIONS—Grant of Street Franchise.—In a petition for *mandamus* to compel a city to take action upon plans and specifications submitted by a subway company for service and supply pipes connecting manholes in a subway constructed by virtue of an ordinance, allegations that space allotted to relators has been appropriated and exclusively occupied by other companies with the city's consent are foreign to the city's failure to take action upon the plans and specifications, and are immaterial and redundant.—STATE v. CITY OF ST. LOUIS, Mo., 46 S. W. Rep. 981.

82. MUNICIPAL CORPORATIONS — Improvements. — Where, under an ordinance providing for the construction of a sewer which fails to sufficiently describe it, a special assessment is made which is successfully resisted, the defect may be cured by amendment, and a new and valid assessment levied; and hence, under article 9, § 49, of the act for the incorporation of cities, providing that persons taking contracts with the city and agreeing to be paid from special assessments shall take all risk of their invalidity, where one has taken a contract for the building of a sewer under such ordinance, which stipulates that he is to make no claim except from the collection of such special assessment, and that in case of its invalidity the city is to make a new assessment, he cannot maintain an action against the city for payment of balance due out of the general fund.—FOSTER v. CITY OF ALTON, Ill., 51 N. E. Rep. 76.

83. MUNICIPAL CORPORATIONS — Officers — Removal from Office.—The power of removal from office, conferred upon a mayor in these words: "For neglect of duty or misconduct in office, the mayor of such city may remove any member of said board" (Rev. St. 1897, § 2690m), is a special authority, and must be strictly pursued. Such power cannot be exercised arbitrarily, but only upon complaint, and after a hearing had in which the officer is afforded opportunity to refute the case made against him.—STATE v. SULLIVAN, Ohio, 51 N. E. Rep. 48.

84. MUNICIPAL CORPORATIONS—Taxing Powers—Counties.—The limitation placed by the constitution (article 7, § 7, par. 1) upon the power of municipal corporations and counties of this State to incur debts does not operate in any way as a limitation upon the taxing power of such corporations and counties.—BOARD OF COMMRS. OF ROADS AND REVENUES OF HABERSHAM COUNTY v. PORTER MFG. CO., Ga., 30 S. E. Rep. 547.

85. MUNICIPAL CORPORATIONS—Veto Power of Mayor. —Local laws 1897, p. 695, ch. 5, provides that the common council shall appoint policemen as they shall deem necessary. By chapter 9, p. 714, no ordinance or resolution passed by the council shall have any effect if the mayor shall file a notice suspending its operation, and within three days give his reasons for the veto, unless afterwards adopted by a two-thirds vote of the council. The mayor, recorder and aldermen constitute the council. Held, that where the council passed a resolution providing for an extra policeman, and at the same time appointed one to fill the position, the combined action is subject to the veto of the mayor.—KINDERMANN v. CITY OF WEST BAY CITY, Mich., 76 N. W. Rep. 10.

86. MUNICIPAL CORPORATIONS—Village—Inadequate Drains.—A village is not liable for the overflow of private property resulting from the inadequacy of its drains constructed for the purpose of carrying off the surface water from its streets, where such property was the natural depository of all of the water discharged thereon.—DUDLEY v. VILLAGE OF BUFFALO, Minn., 76 N. W. Rep. 44.

87. NEGLIGENCE—Dangerous Premises—Structure Attractive to Children.—A landowner is ordinarily under no obligation to a mere licensee or to a trespasser to keep his premises in a safe condition; and the fact that the licensee or the trespasser is an infant of tender years affords no reason for modifying this rule, and charging the landowner with a duty which does not otherwise exist.—DELAWARE, L. & W. R. CO. v. REICH, N. J., 40 Atl. Rep. 682.

88. NEGLIGENCE—Destruction of Building By Fire—Proximate Cause.—In an action for negligence, where the court is able to say that the injury is the remote, and not the proximate, result of defendant's acts, it is

proper to so direct the jury.—STONE v. BOSTON & A. R. CO., Mass., 51 N. E. Rep. 1.

89. NEGLIGENCE—Electric Light Companies.—Where a city fireman was killed by stepping on a charged electric wire, which was broken in two, and lying on the ground in a public alley, the electric light company was *prima facie* negligent, want of notice on its part of the grounding of the wire being an affirmative defense.—GANNON v. LACLEDE GASLIGHT CO., Mo., 46 S. W. Rep. 968.

90. NEGLIGENCE—Obstructing Sidewalk.—It is negligence to throw from the interior of a building the debris of carpenter's work done therein, upon a constantly traveled public sidewalk, and to leave it there throughout the night of Saturday, all Sunday, and all Sunday night; and the lessees of the building are responsible for personal injuries received by a passer upon the sidewalk falling over the same at night,—there being no light, nor other warning or notice given of the presence of such obstructions, and the night being dark.—SHIDET v. JULES DREYFUSS CO., La., 28 South. Rep. 837.

91. OFFICERS—City Clerks—Negligence.—It is a violation of the official duties of a city clerk to draw his warrant on the treasury for the payment of any claim that has not been allowed by the council, or for a larger amount than has been so allowed, obtain the money thereon, and appropriate it, or part of it, to his own use; or to draw his warrant for a valid claim that has been allowed, payable to the creditor or bearer, and then, instead of delivering it to the creditor, present it himself for payment, obtain the money and convert it to his own use; and, for any loss sustained by the city in consequence of such malfeasance of the clerk, the sureties on his official bond are liable.—CITY OF GREENVILLE v. ANDERSON, Ohio, 51 N. E. Rep. 41.

92. PARENT AND CHILD—Death of Child.—The father of a child died. Its mother remarried. The child was killed while employed in a factory. Held, that the remarriage of the mother did not deprive her of the right given by Rev. St. 1889, § 4425, to sue alone for damages for its death.—HENNESSY v. BAVARIAN BREWING CO., Mo., 46 S. W. Rep. 966.

93. PARENT AND CHILD—Work and Labor—Implied Contracts.—An adult worked for his parent with the understanding that he was to be compensated out of the parent's estate after her death. He gave his whole time to her affairs, and his efforts benefited the estate. A misunderstanding arose between them, and the parent requested him to leave, destroying a will which named him as legatee. The son refused to leave, continued to work for her against her wishes, and expended his money in supporting the family. Held, that he could recover from the estate only for services performed prior to the request to leave.—ROBERTSON v. ROBERTSON, Tenn., 46 S. W. Rep. 1029.

94. PARTNERSHIP—Dissolution—Certificate of Deposit.—A time certificate of deposit, issued, after the dissolution of a banking co-partnership, by a member who had become the owner and was carrying on the business of the bank, in the place of a like certificate of the firm, is not a payment of the firm debt, unless the creditor agrees to so receive it.—CHASE v. BRUNDAGE, Ohio, 51 N. E. Rep. 31.

95. PARTNERSHIP — Jurisdiction — Parties. — Upon a petition filed under Laws 1885, p. 285, § 2, requiring the survivors of a co-partnership, on the death of one of the partners, to file an inventory of the estate, and a list of the firm's liabilities, the county court, sitting in probate, has no authority to determine the existence of an alleged partnership, which is denied.—WRIGHT v. WRIGHT, Colo., 53 Pac. Rep. 684.

96. PARTNERSHIP AGREEMENT CONSTRUED. — The terms of an agreement of partnership, unilateral in form, respecting the profits of the renting and sale of real property, construed in the light of the subsequent acts of the parties, and a claim of a right of recovery by one partner against the other for certain interest for the use of money invested in the joint enterprise denied.—EDMUNDS v. MILLER, N. J., 40 Atl. Rep. 686.

97. PARTY WALL—Adjoining Landowners—Damages.—Where one in building a house joins it to the wall of another house without a written contract, but supposing he had purchased a half interest in the wall, equity will not compel him to detach his house from the wall because the owner of the wall believed he was only selling him the privilege to join his building thereto, but will ascertain the damage which such use of the wall has been to the owner, and what advantage it has been to the other, and decree payment accordingly.—MOORE v. OWEN, Tenn., 46 S. W. Rep. 1005.

98. PLEADING—Set-Off—Negotiable Instruments.—The right to set-off is wholly statutory, and under 2 Hill's Code Wash. § 806, when a party is sued by the assignee of a chose in action, he cannot plead against the assignee a set-off which he holds against the assignor unless the demand sought to be set off existed at the time of the assignment, and belonged to the party in good faith before notice of such assignment.—HARRISBURG TRUST CO. v. SHUFELDT, U. S. C. C. of App., Ninth Circuit, 87 Fed. Rep. 669.

99. PRINCIPAL AND AGENT—Power of Attorney.—The authority of an agent under a power of attorney to collect and receipt for a claim against an estate is suspended by his appointment as administrator; and his receipt thereafter to himself as administrator, in the name of his principal, is not binding.—IN RE WATKINS' ESTATE, Cal., 53 Pac. Rep. 702.

100. RAILROAD COMPANY — Liens for Labor. — Under Rev. St. 1895, § 3312, providing that all mechanics, laborers, and operatives who have performed labor, or worked with tools, teams, or otherwise, in the construction, operation, or repair of any railroad, or equipment of railroad, and to whom wages are due for such work, or for the work of tools or teams thus employed, or for work otherwise performed, shall have a lien upon such railroad therefor, a book-keeper and auditor, in the employ of the construction company which built a railroad, is not entitled to a lien thereon for the amount due him for his services.—MILLIGAN v. SAN ANTONIO & G. S. RY. CO., Tex., 46 S. W. Rep. 918.

101. RAILROAD COMPANY—Mandamus to Street Railroad.—One who lives and owns property adjacent to a street-car line, which property he has improved in reliance upon the facilities afforded by the car line, has such an interest as will enable him to maintain as relator an action to compel the car company by *mandamus* to operate that line.—STATE v. SPOKANE ST. RY. CO., Wash., 53 Pac. Rep. 719.

102. RAILROAD COMPANY—Receivers.—A claim against a railroad company which is in the hands of a receiver under foreclosure proceedings, for rent of track privileges accruing prior to the appointment of the receiver, is not entitled, as against the mortgage bondholders, to priority of payment out of the proceeds of sale, where no special equities are shown, and it appears that the lessor relied for payment upon the general credit of the lessee and its sublessee.—LOUISVILLE & N. R. CO. v. CENTRAL TRUST CO. OF NEW YORK, U. S. C. C. of App., Sixth Circuit, 87 Fed. Rep. 500.

103. RAILROAD COMPANY — Street Railroads—Municipal Regulations. — An ordinance requiring a street railroad charging 5 cent fares to sell 6 tickets for 25 cents, or 25 tickets for $1, is unreasonable, when the road is only making yearly net earnings of 3.3 per cent. to 4.5 per cent. on its *bona fide* investment, and paying 5 per cent. interest on its bonds, in a city where the current rate of interest on first mortgage real-estate security is 6 per cent. Such an ordinance is void, under the fourteenth amendment, as depriving the company of its property without due process of law.—MILWAUKEE ELECTRIC RAILWAY & LIGHT CO. v. CITY OF MILWAUKEE, U. S. C. C., E. D. (Wis.), 87 Fed. Rep. 577.

104. RECEIVERS — Actions Against. — Ancillary receivers in Massachusetts of a Kansas railroad com-

pany are not liable for a tort committed by the original receivers of the company in Kansas. — UNION TRUST CO. v. ATCHISON, T. & S. F. R. CO., U. S. C. C., D. (Mass.), 87 Fed. Rep. 530.

105. RECEIVERS—Expenses—Estoppel. — The receiver of a railroad, at the instigation of the bondholders, made several trips to Europe, in an effort to get the property out of its embarrassed financial condition. Held, that the bondholders were estopped to complain of the allowance of the receiver's expenses for such trips out of the proceeds of the sale of the property under a decree of foreclosure. — NORTHERN ALABAMA RY. CO. v. HOPKINS, U. S. C. C. of App., Fifth Circuit, 87 Fed. Rep. 505.

106. REMOVAL OF CAUSES—Federal Question.—A right of removal exists, not only when plaintiff's claim is based upon some provision of the federal constitution or statutes, but also when it appears from his statement of his case that his right of recovery would be defeated by a construction, which may fairly be contended for, of some provision of such constitution or statutes. Thus, a suit by a State to recover lands under a State statute forfeiting a previous railroad grant is removable where the validity of the act of forfeiture is questionable, under the provisions of the federal constitution.—STATE OF MINNESOTA v. DULUTH & I. R. R. CO., U. S. C. C., D. (Minn.), 87 Fed. Rep. 497.

107. SALE—Conditional Sales — Purchasers. — Where plaintiff, without notice, took personal property in payment of a debt, she was a purchaser in good faith, within Laws 1893, p. 253, making unrecorded conditional sales of property absolute as to creditors and purchasers in good faith.—JOHNSTON v. WOOD, Wash., 53 Pac. Rep. 707.

108. SALE—Conditional Sales — Remedy of Seller.—Where a contract of sale of chattels in the form of a lease reserving title in the seller provided that in case of default of payment the seller might retake the goods, and the payments made should be forfeited as damages for use of the goods, a default entitles the seller to maintain replevin notwithstanding such forfeiture is unconscionable.—SANFORD v. GATES, TOWNSEND & CO., Mont., 53 Pac. Rep. 749.

109. SALE—Fraud—Rescission. — Where goods were expressed C. O. D. by a vendor in another State to a vendee in this State, which were entirely different from those embraced in the contract of sale, and the amount of the C. O. D. charges were paid by the vendee to whom the goods were delivered by the express company, and where, immediately upon the discovery of the fraud or mistake, the vendee tendered back the goods to the express company, and notified the vendor, by letter, of his action, the vendor being a non-resident and not accessible, an action by attachment will lie in favor of the buyer against the seller for the purchase money paid for the goods, without any further tender or offer of rescission.—COHEN v. LASKY, Ga., 30 S. E. Rep. 531.

110. SLANDER — Pleading — Innuendo.—In a declaration for slander, if the defamatory words can be understood as imputing crime to the plaintiff, no innuendo is necessary; and, if it be averred, it can be treated as surplusage, but will not render the pleading demurrable because the innuendo attributes a meaning to the words which they will not bear.—FEENEY v. CURLEY, N. J., 40 Atl. Rep. 678.

111. SPECIFIC PERFORMANCE—Preliminary Injunction. —In a suit for specific performance of an alleged contract for the assignment of a large number of patents belonging to defendant, a preliminary injunction, involving the defendant in much inconvenience and possible loss, should not be granted, restraining him from selling or otherwise disposing of a list of patents enumerated as coming within the agreement, where one of the terms of the contract is so indefinite as to make it doubtful whether the court could enforce it, and where it is also doubtful whether some of the patents for which the injunction is sought are embraced within the terms of the contract.—MILLER v. MORLEY FINISHING MACH. CO., U. S. C. C. of App., First Circuit, 87 Fed. Rep. 621.

112. TRESPASS — Mesne Profits.—An action for trespass for mesne profits cannot be maintained, where defendant is in actual possession of the land.—YOUNG v. REES, Mo., 46 S. W. Rep. 962.

113. TRUSTS.—A mother receiving money in settlement of a claim for the negligent killing of her husband does not hold the same as trustee for her children, and a mortgage executed by her on land purchased with such money is not subject to any rights they might have had therein.—SMALLING v. KREECH, Tenn., 46 S. W. Rep. 1019.

114. TRUST—Requirement of Trust Company to Make Deposit.—The imposition of active duties upon a trust company as trustee under a trust deed brings it within the prohibition of the act of 1887, as amended in 1889, regulating trust companies, making it unlawful for such a company to accept a trust before depositing with the auditor of public accounts, for the benefit of its creditors, the sum of $200,000 in stocks of the United States, or municipal bonds of this State, etc.—FARMERS' LOAN & TRUST CO. v. LAKE ST. EL. R. CO., Ill., 51 N. E. Rep. 55.

115. TRUST—Resulting Trusts.—A charge in a bill that defendant purchased land for his wife with her separate means, but took the title in his own name, not showing that it was without her consent, or that there was an agreement that he was to buy the land for her, does not show a resulting trust.—SMITH v. QUARLES, Tenn., 46 S. W. Rep. 1035.

116. VENDOR AND PURCHASER—Interest of Purchaser. —A contract for the purchase of land, made *bona fide*, for a valuable consideration, vests the equitable interest therein in the vendee from the time of the execution of the contract, although the money is not then paid.—WEHN v. FALL, Neb., 76 N. W. Rep. 18.

117. WILLS—Devises—Dry Trusts.—A devise of land to certain children, who were without issue on the death of testator, "in trust for the issue of their bodies, to have and to hold in trust for the issue of their bodies," creates a dry passive trust, which the statute of uses executes by vesting the fee in the issue on their birth.—MIMS v. MACKLIN, S. Car., 30 S. E. Rep. 585.

118. WILLS — Limitation of Title.—A testator devised a portion of his estate to his grandchildren; providing that, in case of the death of either without issue, his portion should descend to the survivors, and, in case of the death of all without issue, the entire portion devised to them should descend to his son. Held, that the devise over to the son limited the title of the grandchildren to a determinable fee or a life estate.—LOMBARD v. WITBECK, Ill., 51 N. E. Rep. 61.

119. WILLS—Trusts for Benefit of Legatee.—Testatrix bequeathed all the residue of her property to her children, and provided that the share thereby bequeathed to a certain daughter should be subject to the provisions contained in item 10 of the will. Item 10 appointed a son as trustee for such daughter, and directed that he take charge of the property bequeathed to her, and pay to her annually the net income derived, and on her death turn over the property to her children. Item 12 provided for the appointment by the probate court of a trustee to take the place of the son, in case of his death. Held, that (without deciding whether the provision for the children of the daughter was valid, but following the intent of the testatrix) there was a complete gift in fee to the daughter, under a trust of management and control, which was valid, though no estate was conferred on the trustee.—THIEME v. ZUMPE, Ind., 51 N. E. Rep. 86.

120. WILLS—Trustees.—A will appointing a brother as executor and trustee, where the provisions of the will required action by him after the death of certain devisees, will be construed as nominating such brother as a legal trustee.—LEONARD v. HAWORTH, Mass., 51 N. E. Rep. 7